

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Northern District of California

PAGEMELDING, INC,

No. C 11-06263 WHA (MEJ)

Plaintiff,

**ORDER FOLLOWING DISCOVERY
HEARING**

v.

ESPN, INC.,

Defendant.

On March 1 and 4, 2013, the parties filed discovery letters regarding a dispute over whether ESPN has complied with Patent Local Rule 3.4(a)'s disclosure requirements. Dkt. Nos. 140, 141. In its letter, PMI charges that ESPN has refused to make its source code available for copying and has failed to provide documentation describing the operation or structures of the accused instrumentalities as required by Rule 3-4(a). ESPN, however, argues that it has made its source code available for inspection, but PMI has not attempted to inspect it.

Because the parties were unable to schedule a time to meet and confer prior to filing their discovery letters, the Court ordered them to appear in court for a meet and confer session. After the parties failed to reach an agreement, the Court held a hearing on the dispute. Having considered the argument from the parties, the Court **ORDERS** as follows.

Before moving to compel production of additional documentation based on the argument that the source code is insufficient to show the operation of the accused instrumentalities, *PMI must actually inspect the source code*. Accordingly, ESPN shall coordinate with PMI to schedule a date and time when it will make the source code available to PMI for inspection.

PMI shall then have its source code expert examine the source code. If after such inspection, PMI believes that it is unable to make a meaningful inspection of the source code without additional

1 documentation, counsel shall meet and confer – along with their respective experts – and attempt to
2 reach an agreement. If the parties are unable to reach an agreement, they may file a joint letter
3 explaining what information PMI believes is necessary and that ESPN has failed to provide, and
4 ESPN may state its bases for not producing such information.

5 Should PMI demonstrate that ESPN has willfully withheld documentation necessary to enable
6 PMI’s expert to make a meaningful inspection of the source code, the Court may award sanctions
7 against ESPN based on its failure to make required disclosures pursuant to Rule 3-4(a).

8 **IT IS SO ORDERED.**

9
10 Dated: March 29, 2013



11 Maria-Elena James
12 United States Magistrate Judge