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4   UNITED STATES DISTRICT COURT

5   NORTHERN DISTRICT OF CALIFORNIA

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7   FINISAR CORPORATION,   Case No. 13-cv-03345-BLF   (JSC)

              Plaintiff,

8
           v.   **ORDER RE: DISCOVERY DISPUTE**

9
                                                   Re: Dkt. No. 220
       NISTICA, INC.,
10
              Defendant.
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13   Now pending before the Court is the parties' joint letter brief regarding Finisar's request

14   for an order compelling Nistica to install certain software tools on the computer designated for

15   review of Nistica's source code. (Dkt. No. 220.) The Court heard oral argument on the discovery

16   dispute on July 9, 2015. For the reasons stated on the record in open court at the hearing and

17   discussed briefly below, the Court GRANTS Finisar's request for an order compelling Nistica to

18   install the software programs.

19   The Stipulated Protective Order ("Protective Order") in this case provides in relevant part

20   that "the Producing Party [i.e., Nistica] shall install tools that are sufficient for viewing and

21   searching the code produced[,]," and that the Receiving Party [here, Finisar] "may request that

22   commercially available software tools for viewing and searching source code be installed on the

23   Confidential Source Code Computer, and the Producing Party may not unreasonably refuse such

24   requests." (Dkt. No. 140 ¶ 6(c).) Further, "the Receiving Party shall not at any time use any

25   compilers, interpreters or simulators in connection with the Producing Party's Source Code." (Id.)

26   The requested software tools, Cygwin and the Compare Plug-In for Notepad++, can be installed

27   without any compiling, interpreting, or simulating functions that the Protective Order prohibits.

28   Instead, Finisar seeks to use the programs for their "comparing" function, which allows

comparison of various versions of source code and highlights the differences, analogous to the "redline" function of Microsoft Word. Comparing facilitates the "viewing" of the source code and thus is permitted by the Protective Order. However, because comparing identifies changes— conceivably, improvements—to Nistica's products, these "redlined" versions are particularly sensitive to Nistica's commercial interests.

Accordingly, it is hereby ORDERED that Nistica shall install Cygwin and the Compare Plug-in for Notepad++ on the designated Source Code computer, without any compilers, interpreters, or simulators, by Monday, **July 13, 2015**. The Court finds that bash.exe is not an interpreter. To the extent it can nonetheless be used as such, Finisar is, of course, prohibited from doing so. It is further ORDERED that Finisar may not request or obtain copies of any "redlined" version of Nistica's source code that these software tools create. The Court declines Finisar's request to extend the due date for expert reports.

IT IS SO ORDERED.

Dated: July 9, 2015

JACQUELINE SCOTT CORLEY
United States Magistrate Judge