

## Judge Albright Rules on Disputed Source Code Protocol

JUNE 15, 2020

In telephonic proceedings before the Court, the parties raised disputes regarding the following source code issues: 1) location of code review; 2) printed page limits; 3) protocol for note-taking during code review; and 4) protocol for using code during expert depositions.

On the location of code review, the Court ordered Defendant (and accused infringer) Facebook to physically transport code to a single location for review. Plaintiff was ordered to reimburse Defendant for the travel costs (airfare, etc.).

On the issue of page limits, in a four-patent case accusing at least two sets of products/features, the Court ordered an initial printed page limit of 250 pages of code with a limit of 25 consecutive pages. However, the Court left the door open to expanding these limits if “needed.”

On the protocol for note-taking during code review, the parties had agreed that Plaintiff’s representatives would be permitted to take notes on a computer during code review, and that note-taking could not include copying the source code “at all.” Defendant wanted to limit the number of pages of notes to 100 and Plaintiff argued that was inadequate. The Court set a “baseline” of 200 pages of notes and left the door open for expanding this limit. These notes would be classified as highly confidential, and a protocol was set for Defendant to copy and provide these notes to Plaintiff (presumably after the code review has occurred).

On the protocol for making code available during expert depositions, the Court ordered Defendant to bring a source code computer to expert depositions. The Court ordered that if code was used during the deposition, the names of the files, line numbers, and a timestamp should be used to reference the code being discussed, apparently in lieu of Plaintiff’s proposal to put the source code into the record as an exhibit.

*MasterObjects, Inc., v. Facebook, Inc.*, No. 6:20-cv-87-35 (June 1, 2020)

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