

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MYMAIL, LTD.,

Plaintiff,

v.

ESPN, INC.,

Defendant.

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Civil Action No. 2:17-cv-_____

Jury Trial Demanded

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff MyMail, Ltd. files this Complaint against ESPN, Inc. and alleges as follows.

PARTIES

1. Plaintiff MyMail, Ltd. (“MyMail”) is a Texas limited partnership with an office and place business at 5344 County Road 3901, Athens, TX 75752. MyMail was founded in 2003 as an intellectual property development and licensing company to provide secure, Internet-related services and efficient web page interaction to Internet service providers, mobile device manufacturers, network carriers, and Internet related toolbar developers. MyMail’s toolbar patents disclose inventions that allow for the dynamic updating, changing, or modification of toolbar data from remote servers (the “MyMail Toolbar Technology”). Using the MyMail Toolbar Technology, toolbar providers can, for example, dynamically change elements, functions, and buttons on their toolbar(s) for specific targeted users based on use and individual searches. MyMail has successfully licensed the MyMail Toolbar Technology to toolbar providers.

2. Upon information and belief, Defendant ESPN, Inc. (“ESPN”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of

business located at 1 ESPN Plaza, Bristol, Connecticut 06010. ESPN may be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Defendant is engaged in the business of publishing and distributing a browser plug-in called the ESPN Toolbar that integrates with Microsoft Internet Explorer browsers to allow users to access sports headlines, alerts regarding specific sports teams and other functionalities from any web page location (the “ESPN Toolbar”). The ESPN Toolbar docks itself to a device’s browser when installed and sits atop the browser at all times. Defendant publishes, promotes, and distributes the ESPN Toolbar to users in the United States, including users within this District.

5. Upon information and belief, Defendant is subject to this Court’s specific personal jurisdiction because it does business in the State of Texas and has committed acts of infringement in the State of Texas as alleged below. In particular, upon information and belief, Defendant is subject to the specific personal jurisdiction of this Court because MyMail’s claims for patent infringement against Defendant arise from its acts of infringement in the State of Texas. These acts of infringement include providing the infringing ESPN Toolbar to users of the ESPN Toolbar in the State of Texas, and causing the browser on a user device to display the ESPN Toolbar and perform the other functions of the asserted claims. Therefore, this Court has

personal jurisdiction over the Defendant under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Defendant has engaged in acts of infringement in the State of Texas described herein sufficient to subject it to personal jurisdiction in this District if the District were a separate State.

THE PATENTS-IN-SUIT

7. On September 25, 2012 the United States Patent and Trademark Office issued United States Patent No. 8,275,863 (the “’863 Patent”) entitled “Method of Modifying a Toolbar,” a true copy of which is attached as Exhibit 1.

8. On April 28, 2015, the United States Patent and Trademark Office issued United States Patent No. 9,021,070 (the “’070 Patent”) entitled “Dynamically Modifying a Toolbar,” a true copy of which is attached as Exhibit 2. The ’070 Patent is a continuation of the ’863 Patent. The ’863 and ’070 Patents are collectively referred to as the “Asserted Patents.”

9. MyMail is the owner of the ’863 and ’070 Patents, and has the exclusive right to sue for and recover all past, present and future damages for infringement of the Asserted Patents.

ALLEGATIONS COMMON TO ALL CLAIMS

10. The ESPN Toolbar software cause a toolbar to be displayed on a user Internet device (*i.e.*, a device that can communicate with other devices via the Internet) that includes toolbar buttons. For example, the ESPN Toolbar displayed on a user Internet device includes the “Headlines” and “RSS” buttons indicated in FIGURE 1.

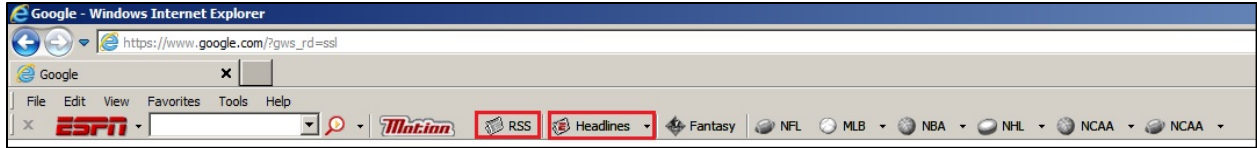


FIG. 1

11. The toolbar buttons on the ESPN Toolbar are defined by toolbar data stored in one or more toolbar-defining databases. In particular, the toolbar buttons on the ESPN Toolbar are defined by toolbar data as indicated in FIGURE 2 below stored in the “AppData\Roaming\ESPN\Toolbar\Config” folder on the user Internet device.

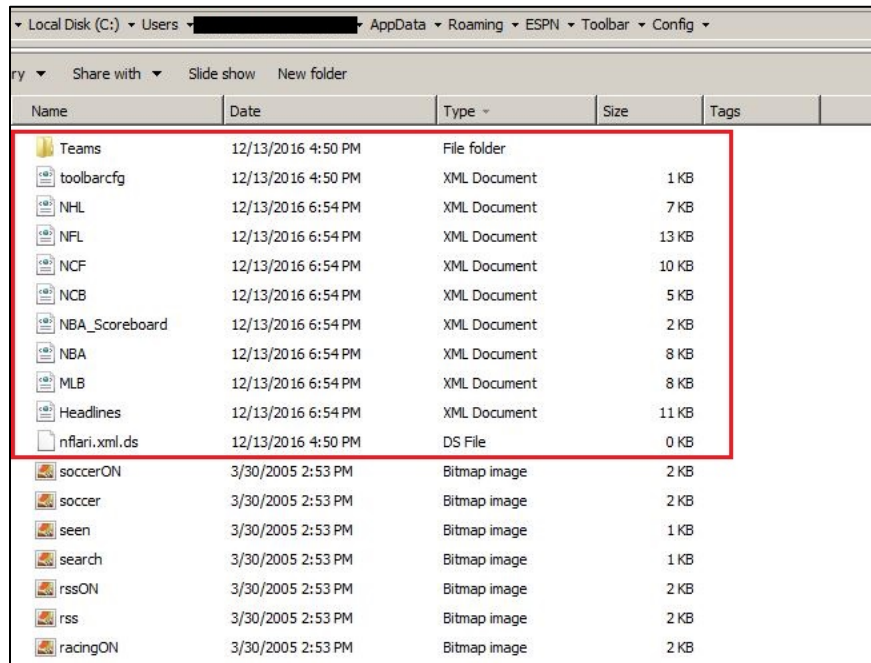


FIG. 2

12. The toolbar buttons are also defined by toolbar data as indicated below in FIGURE 3 stored in the “AppData\Roaming\ESPN\Toolbar\Config\Teams” folder on the user Internet device.

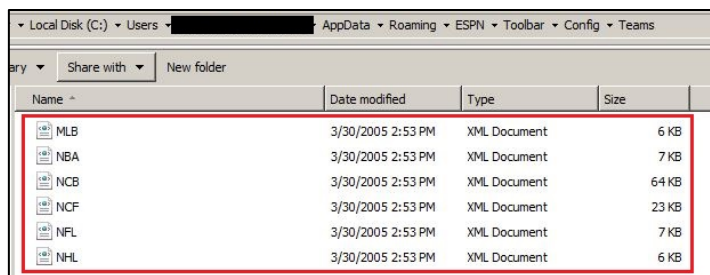


FIG. 3

13. The toolbar buttons are also defined by toolbar data as indicated below in FIGURES 4, 5, and 6 stored in the Windows System Registry on the user Internet device.

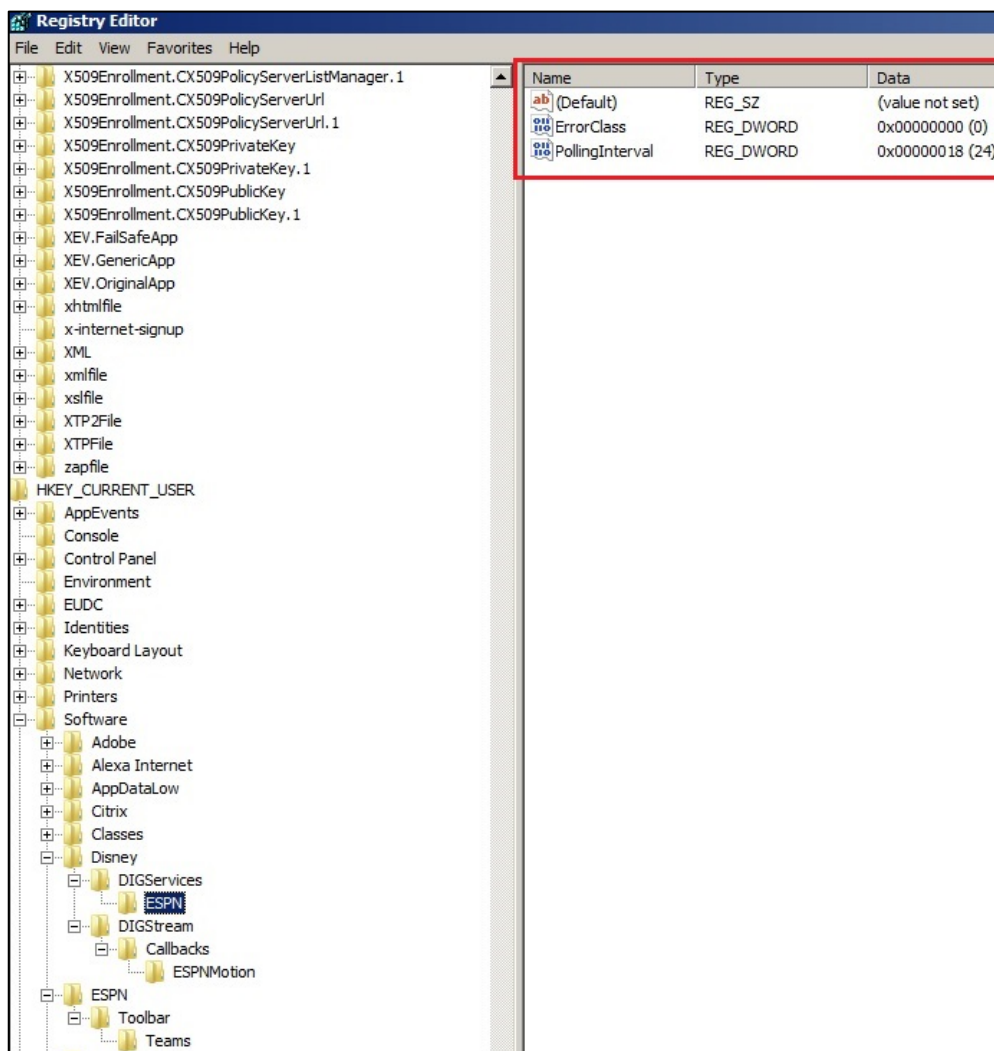


FIG. 4

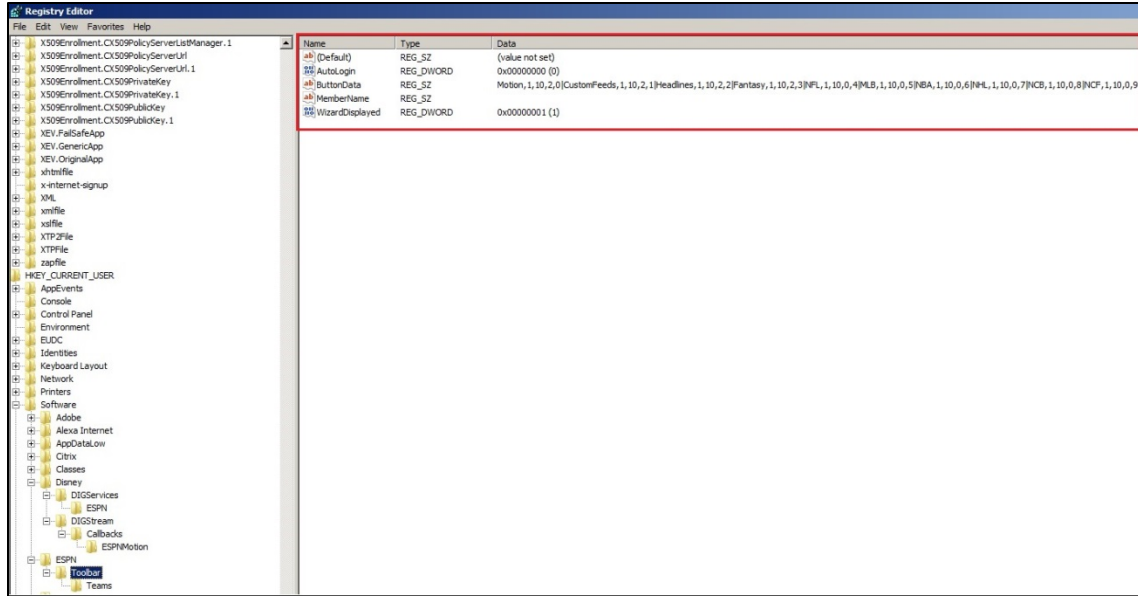


FIG. 5

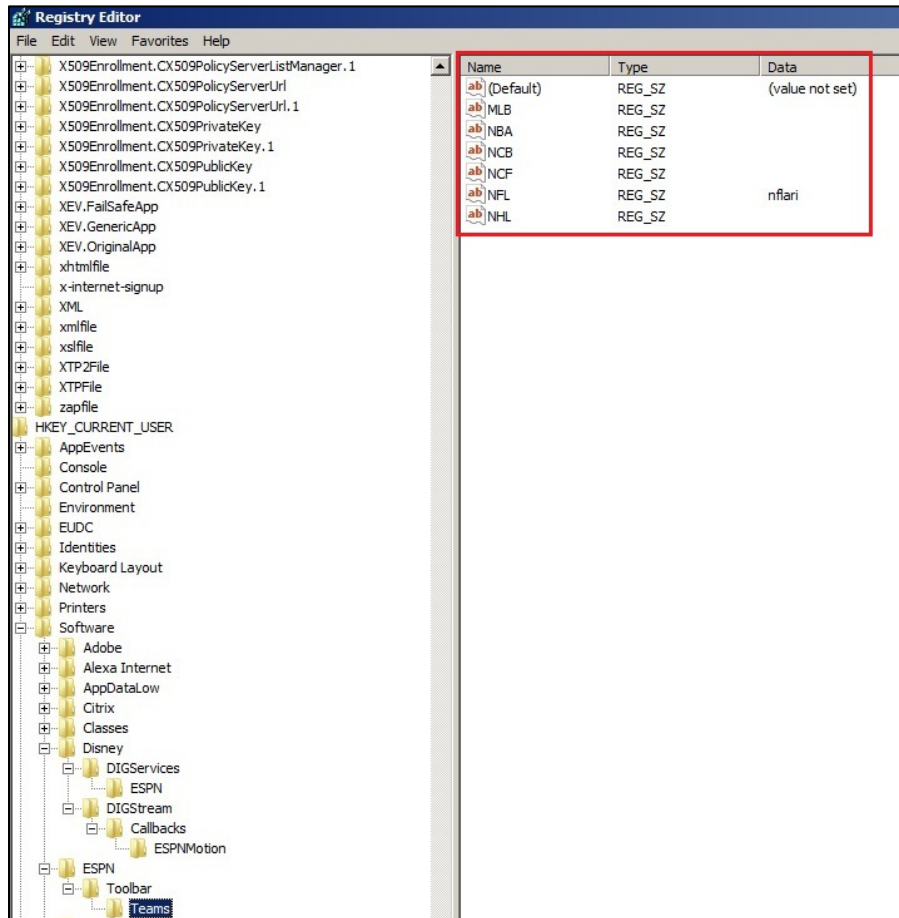


FIG. 6

14. The “AppData\Roaming\ESPN\Toolbar\Config” folder, “AppData\Roaming\ESPN\Toolbar\Config\Teams” folder, and the Windows System Registry constitute toolbar-defining databases of the user Internet device.

15. The toolbar data of the ESPN Toolbar constitutes a plurality of toolbar button attributes associated with the one or more toolbar buttons of the toolbar. For example, as shown below in FIGURE 7, the toolbar data in the “Headlines.xml” file in the “AppData\Roaming\ESPN\Toolbar\Config” folder on the user Internet device includes a plurality of toolbar button attributes associated with one or more toolbar buttons of the toolbar.

```

<?xml version="1.0" encoding="UTF-8"?>
- <rss xmlns:content="http://purl.org/rss/1.0/modules/content/" xmlns:atom="http://purl.org/atom/ns#"
  xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#" xmlns:admin="http://webns.net/mvcb/"
  xmlns:sy="http://purl.org/rss/1.0/modules/syndication/" xmlns:dc="http://purl.org/dc/elements/1.1/" version="2.0">
- <channel>
- <title>
- <![CDATA[www.espn.com - TOP]]>
</title>
<description>Latest TOP news from www.espn.com</description>
<link>http://www.espn.com</link>
<ttl>30</ttl>
<language>en</language>
<generator>ESPN Inc. http://www.espn.com</generator>
<copyright>Copyright 2015 ESPN Inc.</copyright>
<lastBuildDate>Tue, 13 Dec 2016 15:28:10 GMT</lastBuildDate>
<image>
  <url>http://a.espncdn.com/i/espn/teamlogos/lrg/trans/espn_dotcom_black.gif</url>
  <title>www.espn.com - TOP</title>
  <link>http://www.espn.com</link>
  <width>110</width>
  <height>110</height>
</image>
- <item>
- <title>
- <![CDATA[Rams COO: Fisher firing 'organizational failure']]>
</title>
- <description>
- <![CDATA[Rams COO: Fisher firing 'organizational failure']]>
</description>
- <link>
- <![CDATA[http://www.espn.com/nfl/story/_/id/18263718/jeff-fisher-fired-head-coach-los-angeles-rams]]>
</link>
- <pubDate>Mon, 12 Dec 2016 14:44:28 EST</pubDate>
- <guid isPermaLink="false">
- <![CDATA[18263718]]>
</guid>
</item>
- <item>

```

FIG. 7

16. At least one of the toolbar button attributes (for example, in the “Headlines.xml” toolbar data) identifies a function to be performed by a specific toolbar button upon actuation of

the toolbar button. For example, as shown below in FIGURE 8, the “link” toolbar button attribute includes the following function to be performed when the “Headlines” button is clicked.

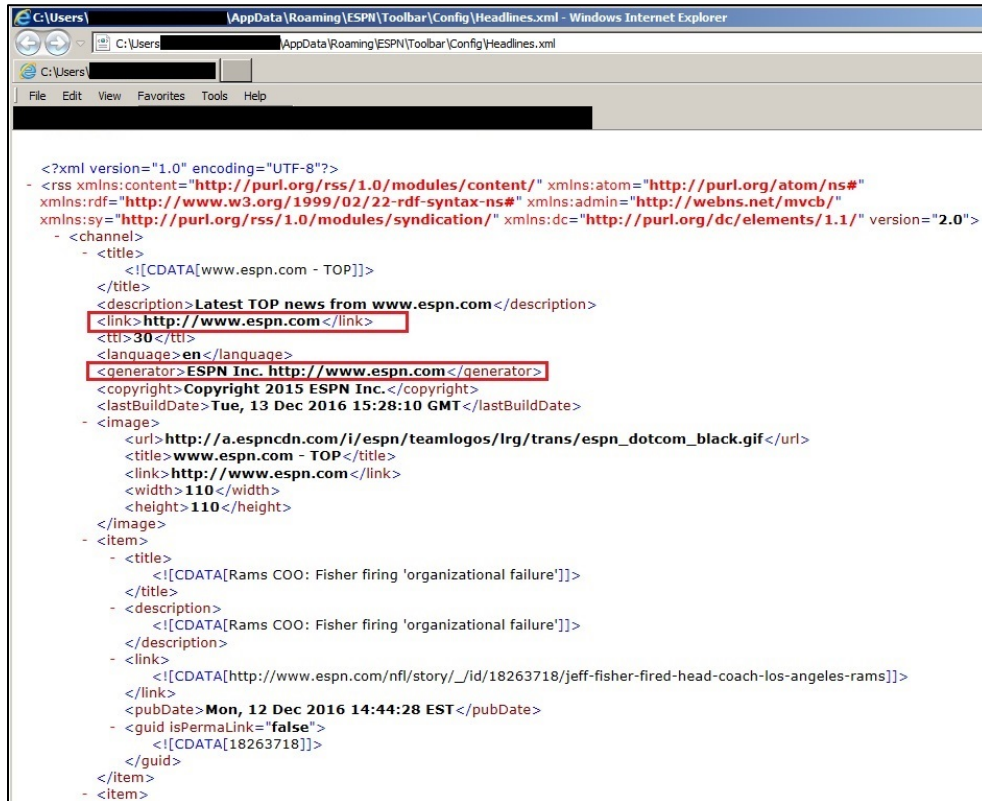


FIG. 8

17. When the user clicks on the drop-down arrow of the “Headlines” button on the ESPN Toolbar, as shown below in FIGURES 9 and 10, the list of latest headlines is displayed.



FIG. 9



FIG. 10

18. The ESPN Toolbar performs a method for dynamically modifying a toolbar. For example, as shown below in FIGURE 11, the ESPN Toolbar communicates with a server at IP Address 68.71.212.43, to modify the ESPN Toolbar by, for example, updating the latest headlines that are displayed in the toolbar.

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
18	16:50:27.513	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	9,462	max-ag...	text/xml;charset=UTF-8

FIG. 11

19. The ESPN Toolbar on the user Internet device automatically sends encoded data representing the revision level of the toolbar defining database to a network address. For example, as shown below in FIGURES 12, 13, 14, and 15 a GET request sent from a user Internet device to a predetermined network address such as 68.71.212.43 includes encoded data as indicated by the red box, and this encoded data changes between different requests. On information and belief, this encoded data includes information which constitutes a revision level of the one or more toolbar-defining databases. In addition, the update request headers contain parameters such as, for example, 'CRBLM_LAST_UPDATE.' On information and belief one of more of these update request header parameters constitutes a revision level of the one or more toolbar-defining databases.

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
18	16:50:27.513	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	9,462	max-ag...	text/xml;charset=UTF-8

FIG. 12

```

Request Headers [Raw] [Header Definitions]
GET /espn/rss/news?headlineMode=1 HTTP/1.1
Cache
  Pragma: no-cache
Client
  User-Agent: DIGStreamLib/4.0 Win32/6.1
Cookies
  Cookie
    device=pc
    iptac=42317268F968691EA115-49652AAA05D5=554e495445444c4558474c4f42414c5c61616b6173682e72616468616b726973686e616e405556e697465644c65785f476c6f
    SWID=1E4EAD43-2BF3-4F4D-9A27-AAA865203D30
    userab=0
  DNT: 1
Transport
  Connection: Keep-Alive
  Host: www.espn.com
    
```

FIG. 13

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
727	18:54:10.051	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	10,474	max-ag...	text/xml;charse

FIG. 14

```

Request Headers [Raw] [Header Definitions]
GET /espn/rss/news?headlineMode=1 HTTP/1.1
Cache
  Pragma: no-cache
Client
  User-Agent: DIGStreamLib/4.0 Win32/6.1
Cookies
  Cookie
    __gads
      ID=421c5d967b806759:T=1481632674:S=ALNI_MZ9JRpiWfAte25ePXzzDcRZ9doMyy
      _cb_js=1
      _cb=Ux4RPDg9sSgClkXJS
      _chartbeat2=,1481632679265.1481632687413.1.ChV8XsDBe,_PBbAPkzBzDTtav34ap
      _nr=0
      _omnicwtest=works
      AMCV_EE0201AC512D2BE80A490D4C%40AdobeOrg=-1248264605%7CMCIDTS%7C17149%7CMCMID%7C72763815460751225743872564644867699727%7CMCAAMLH
      AMCVS_EE0201AC512D2BE80A490D4C%40AdobeOrg=1
      block.check=false%7Cfalse
      cookieMonster=1
      country=us
      country-view=us
      CRBLM_LAST_UPDATE=1481632676:1E4EAD43-2BF3-4F4D-9A27-AAA865203D30
      CRBLM=CBLM-001:
      ctoBrowserSession=1481632687664
      ctoLocalVisitor={%22user_visitor_id_local%22:%221481632687649-9115926434253%22}
      DE2=dXNhO2O2xlyXdvb2Q7YnJvYWRlYW5kOzU7NTs1OzYxNjszOC45MDE4NDstOTQuNmZMc3ODQwOzE3OzQ0MTg4OzY7dXM7
      device=pc
    DS
      dW5pdGVkbGV4LmNvbTswO3vuaXRlZGxleCBjb3Jwb3JhdGlvbj0=
      espnCreative74946025257=true
      iptac=42317268F968691EA115-49652AAA05D5=554e495445444c4558474c4f42414c5c61616b6173682e72616468616b726973686e616e405556e697465644c65785f476c6f
      lang-view=en
      mp_6b347c39f0f57067a36acc6aa600a094_mixpanel=%7B%22distinct_id%22%3A%20%22158f830a58290-0adcbecd73f4788-32553224-1fa400-158f830a5833e0%22%3B%22s_c24%22%3A%20%221481632688111%22%3B%22s_cc%22%3A%20%22true%22%3B%22s_omni_id%22%3A%20%22%5B%5D%22%3B%22s_vi%22%3A%20%22%5B%5D%22%3B%22swid%22%3A%20%221E4EAD43-2BF3-4F4D-9A27-AAA865203D30%22%3B%22userab%22%3A%20%2228%22%7D
      userab=28
  DNT: 1
Transport
  Connection: Keep-Alive
  Host: www.espn.com
    
```

FIG. 15

20. On information and belief, a server at the predetermined network address determines, from the revision level, that the user Internet device should receive the toolbar update data because, as shown below in FIGURES 16, 17, and 18 the server at IP address 68.71.212.43 responds to the “GET” request by sending updated toolbar data to the user Internet device. MyMail expects that access to the server-side source code will confirm this functionality.

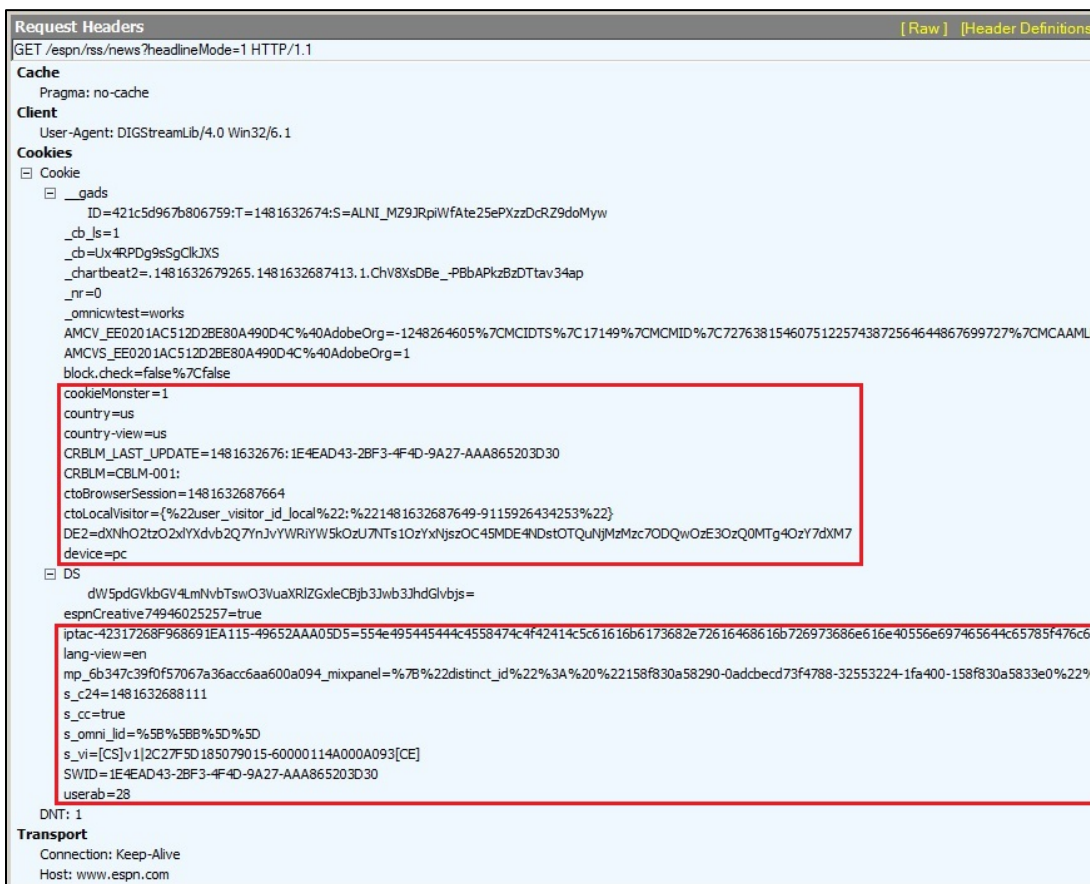


FIG. 16

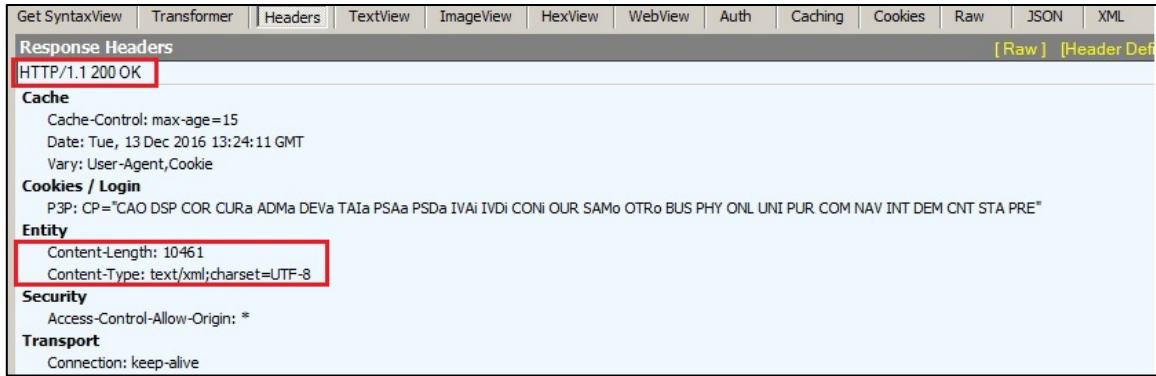


FIG. 17

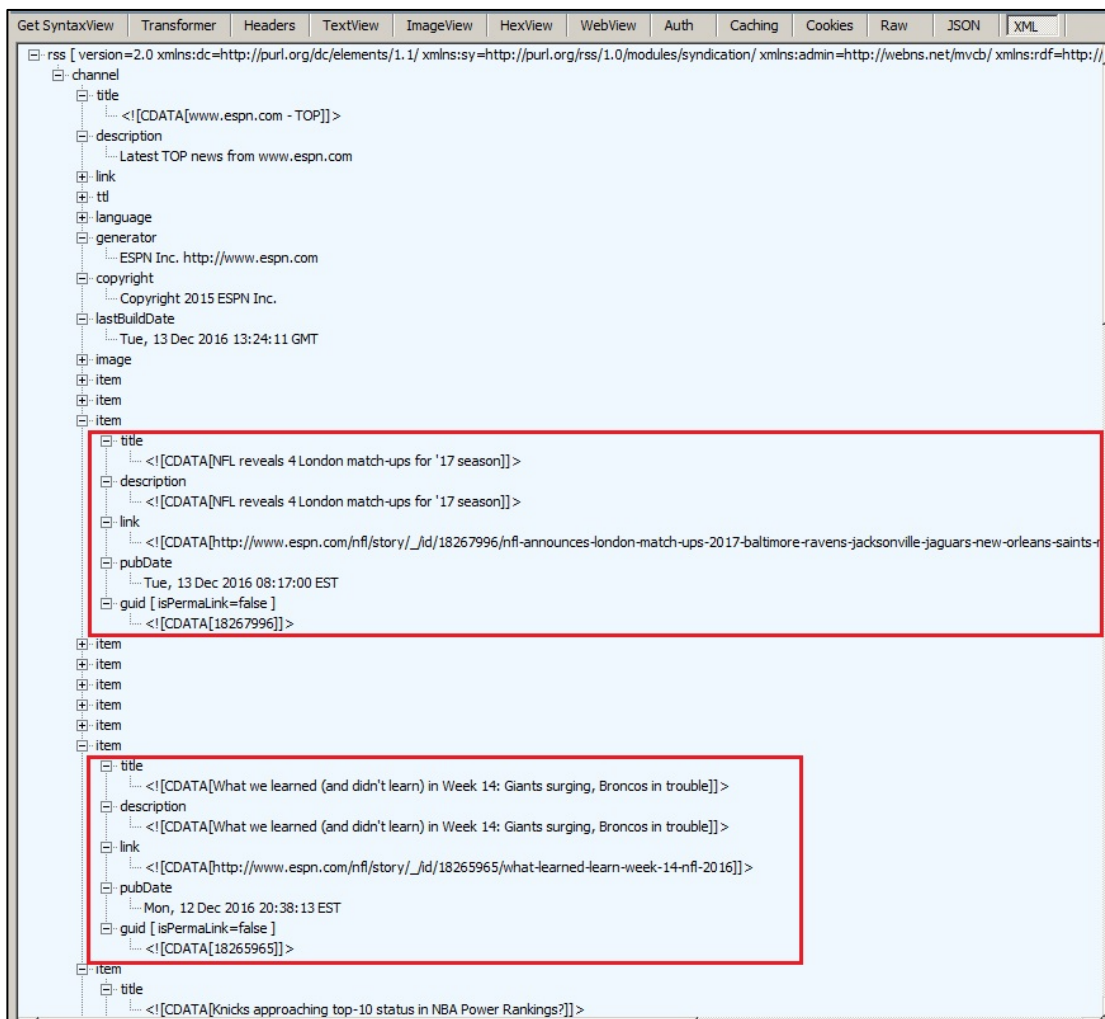


FIG. 18

21. The ESPN Toolbar causes the user Internet device to receive the updated toolbar data from the Internet. For example, as shown below in Figures 19 and 20, the user Internet

device receives the updated toolbar data such as the updated sports headlines, in the form of text/xml messages from the server at IP address 68.71.212.43.

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
727	18:54:10.051	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	10,474	max-ag...	text/xml;charse

FIG. 19

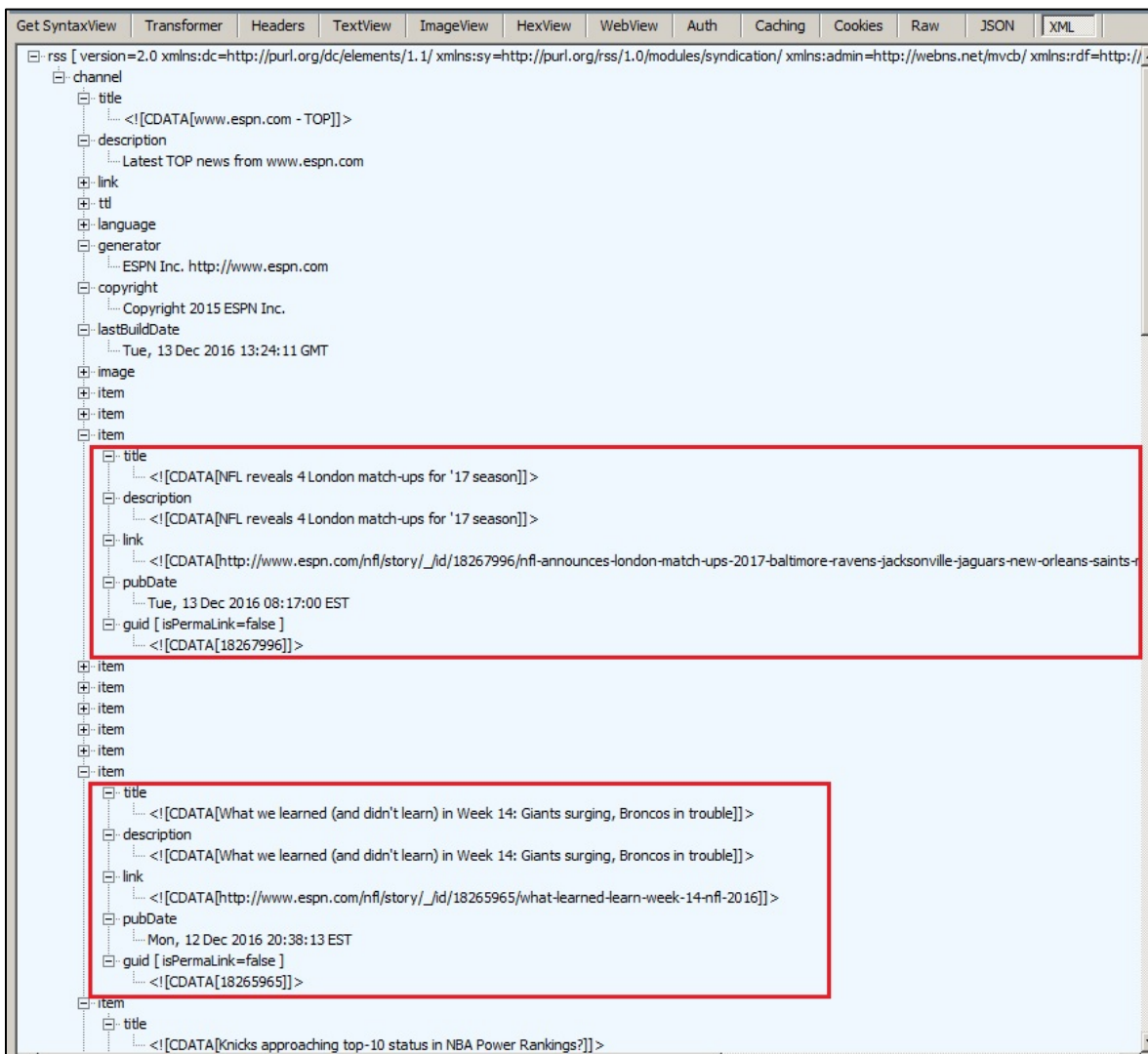


FIG. 20

22. The ESPN Toolbar initiates, at the user Internet device and without user interaction, an operation to update the toolbar data in accordance with the received updated toolbar data. For example, as shown below in FIGURES 21, 22, and 23, the user Internet device

receives the updated toolbar data such as the latest sports headlines, in the form of text/xml messages from the server at IP address 68.71.212.43. The user Internet device updates the toolbar data by displaying the latest news indication through bullets in the drop-down list of the “Headlines” button in the ESPN Toolbar.

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
727	18:54:10.051	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	10,474	max-ag...	text/xml;charse

FIG. 21

```

    <?xml version="2.0" xmlns:dc="http://purl.org/dc/elements/1.1/" xmlns:sy="http://purl.org/rss/1.0/modules/syndication/" xmlns:admin="http://webns.net/mvcb/" xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#" >
    <channel>
      <title><![CDATA[www.espn.com - TOP]]></title>
      <description>Latest TOP news from www.espn.com</description>
      <link></link>
      <ttl></ttl>
      <language></language>
      <generator>ESPN Inc. http://www.espn.com</generator>
      <copyright>Copyright 2015 ESPN Inc.</copyright>
      <lastBuildDate>Tue, 13 Dec 2016 13:24:11 GMT</lastBuildDate>
      <image></image>
      <item></item>
      <item></item>
      <item>
        <title><![CDATA[NFL reveals 4 London match-ups for '17 season]]></title>
        <description><![CDATA[NFL reveals 4 London match-ups for '17 season]]></description>
        <link><![CDATA[http://www.espn.com/nfl/story/_id/18267996/nfl-announces-london-match-ups-2017-baltimore-ravens-jacksonville-jaguars-new-orleans-saints-r]]></link>
        <pubDate>Tue, 13 Dec 2016 08:17:00 EST</pubDate>
        <guid [isPermaLink=false]><![CDATA[18267996]]></guid>
      </item>
      <item></item>
      <item></item>
      <item></item>
      <item></item>
      <item>
        <title><![CDATA[What we learned (and didn't learn) in Week 14: Giants surging, Broncos in trouble]]></title>
        <description><![CDATA[What we learned (and didn't learn) in Week 14: Giants surging, Broncos in trouble]]></description>
        <link><![CDATA[http://www.espn.com/nfl/story/_id/18265965/what-learned-learn-week-14-nfl-2016]]></link>
        <pubDate>Mon, 12 Dec 2016 20:38:13 EST</pubDate>
        <guid [isPermaLink=false]><![CDATA[18265965]]></guid>
      </item>
      <item>
        <title><![CDATA[Knicks approaching top-10 status in NBA Power Rankings?]]></title>
      </item>
    </channel>
  
```

FIG. 22



FIG. 23

23. The ESPN Toolbar further updates the toolbar data at the user Internet device based on the operation and in accordance with the updated toolbar data. For example, as shown below in FIGURES 24 and 25, the server at IP address 68.71.212.43 sends the user Internet device updated toolbar data in the form of text/xml messages containing the updated toolbar data.

#	ClientBeginReq...	X-ClientIP	X-HostIP	Result	Protocol	Host	URL	Body	Caching	Content-Type
727	18:54:10.051	127.0.0.1	68.71.212.43	200	HTTP	www.espn.com	/espn/rss/news?headlineMode=1	10,474	max-ag...	text/xml;charse

FIG. 24

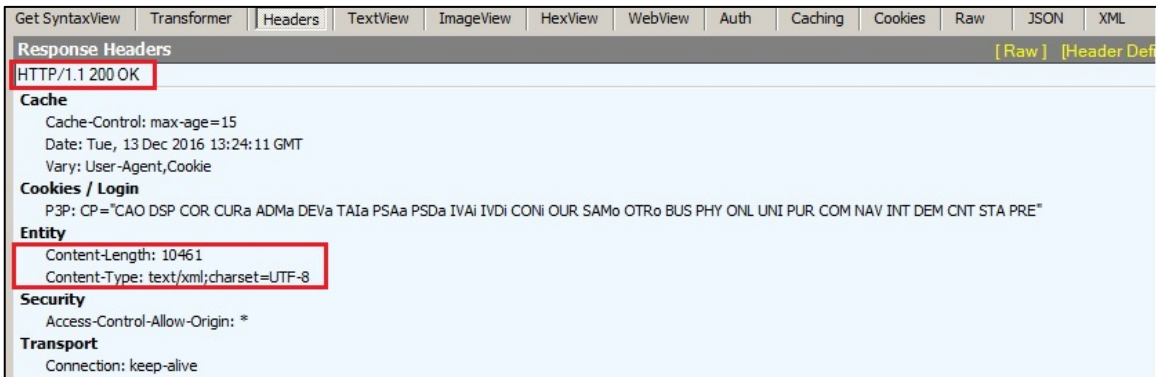


FIG.25

24. More particularly, the server sends the updated toolbar data such as latest headlines in the form of XML data, for example, as shown below in FIGURE 26.

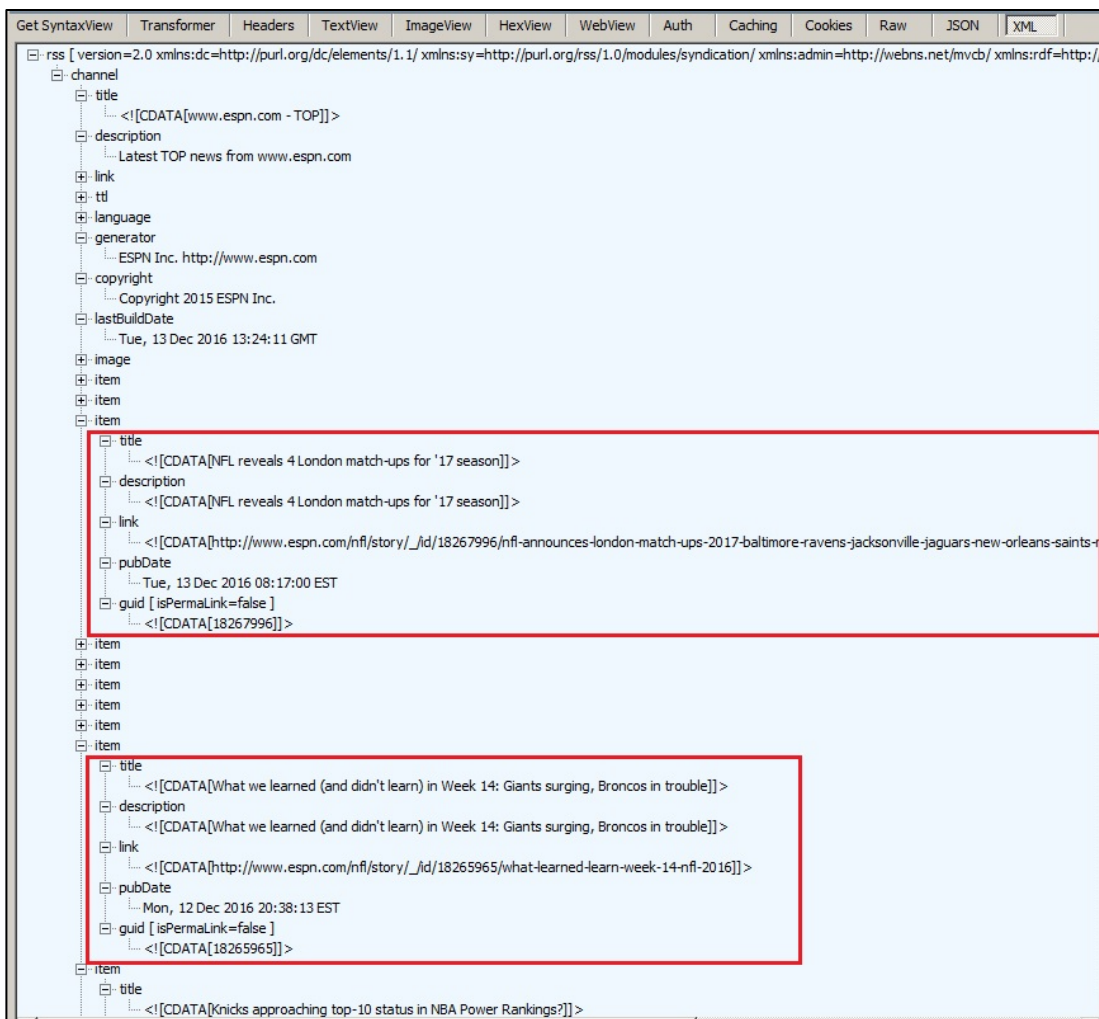


Fig. 26

25. The ESPN Toolbar is configured to receive the updated toolbar data and perform an operation that includes, for example, updating the toolbar data to modify an attribute of at least one of the one or more toolbar buttons of the toolbar. For example, as shown below in FIGURE 27, the ESPN Toolbar receives the updated toolbar data in the form of latest headlines, and modifies an attribute of at least one of the one or more toolbar buttons of the toolbar, such as by displaying the latest news indication through bullets in the drop-down list of the “Headlines” button without any user interaction.



FIG. 27

26. The ESPN Toolbar causes the toolbar, as defined by the updated toolbar data, to be displayed at the user Internet device. The ESPN Toolbar receives the updated toolbar data, for example, in the form of latest news, and modifies an attribute of at least one of the one or more toolbar buttons of the toolbar, such as by displaying the latest news indication through bullets in the drop-down list of the “Headlines” button in the toolbar as shown below in FIGURE 28.

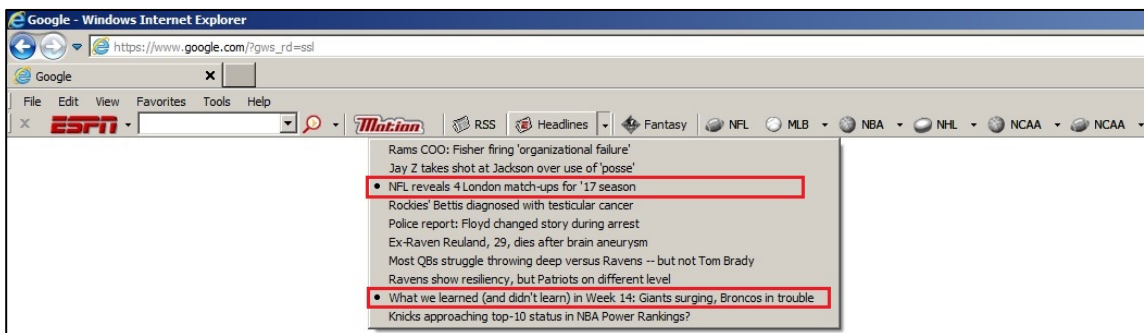


FIG. 28

27. The ESPN Toolbar performs each of the functions described in the asserted claims, including the functions described above. In particular, the ESPN Toolbar software embedded in the browser of the user Internet device and remotely located, such as on a server remote from the user Internet device, instructs these devices to perform these functions. The

ESPN Toolbar, therefore, directs and controls the functions of the user Internet device and the remote device(s) that perform the functions described above.

28. To the extent any third party performs any of the functions described above, the performance of such functions is attributable to the ESPN Toolbar because it directs and controls the performance of those functions.

CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 8,275,863

29. Plaintiff incorporates paragraphs 1 through 28 as though fully set forth herein.

30. Upon information and belief, Defendant has been and is now directly infringing one or more claims of the '863 Patent by using the ESPN Toolbar (including use for testing purposes) in the United States in violation of 35 U.S.C. § 271(a). The ESPN Toolbar performs the method of modifying a toolbar as described in one or more of the claims of the '863 Patent.

31. Plaintiff has been damaged by Defendant's infringing activities.

CLAIM 2 – INFRINGEMENT OF U.S. PATENT NO. 9,021,070

32. Plaintiff incorporates paragraphs 1 through 28 as though fully set forth herein.

33. Upon information and belief, Defendant has been and is now directly infringing one or more claims of the '070 Patent by using the ESPN Toolbar (including use for testing purposes) in the United States in violation of 35 U.S.C. § 271(a). The ESPN Toolbar performs the method of modifying a toolbar as described in one or more of the claims of the '070 Patent.

34. Plaintiff has been damaged by Defendant's infringing activities.

DEMAND FOR JURY TRIAL

35. Plaintiff, pursuant to Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. A judgment in favor of Plaintiff that Defendant has directly infringed one or more claims of the Asserted Patents;
2. A judgment and order requiring Defendant to pay Plaintiff damages adequate to compensate for infringement under 35 U.S.C. § 284, which damages in no event shall be less than a reasonable royalty for the use made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements; and
3. Any and all such further necessary relief as the Court may deem just and proper under the circumstances.

Dated: March 14, 2017

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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