United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,

      Plaintiff,   No. C 10-03561 WHA

  v.

 GOOGLE INC.,   **REQUEST FOR FURTHER PHASE ONE BRIEFING RE COPYRIGHTABILITY OF SSO**

      Defendant.

                      /

      On **MAY 10, 2012, AT NOON**, both sides may file memoranda to add any legal argument they wish on the issue of SSO copyrightability beyond what they have said in their voluminous proposed findings and conclusions of law, each limited to twenty pages. Replies limited to ten pages may be filed by **NOON ON MAY 14**. All evidence relied on *must* be in the trial record and received in evidence.

      In those briefs, please address the following:

      1.   If the Copyright Act is meant to protect expression but not vocabulary, should the vocabulary and grammar of a computer language be copyrightable, as distinct from programs written in the language? In this regard, please comment on the May 2, 2012, decision of the High Court of the European Union.

2.   If each API method is a program — pre-packaged but nonetheless a program — did Google copy anything more than the name and the declaration (substituting its own implementation)?

3.   If the format of the name is dictated by the Java programming rules, then is the form of "java.package.class.method" required by the syntax of the language itself?

4.   Could Google have come up with different names and SSO yet still have provided the same functionality as in Android? Android users would have had to learn a new vocabulary and a new outline but the methods would all still have been resident in such a modified Android. True? Is this what the UK company Spring did?

5.   Is the input-output (*i.e.*, argument and return) scheme of a method copyrightable? For example, can someone copyright the function of inputting an angle and outputting the cosine of that angle? If someone has a copyright on a particular program to find cosines, does that copyright cover all other implementations that perform the identical function (input = angle, output = cosine)?

6.   Is it agreed that the following is true, at least as of 1996?

> The following were the core Java Application Programming Interface: java.lang, java.util and java.io.

7.   Does the Java programming language refer to or require any method, class or package outside the above three?

8.   To what extent do subparts of the above three Java packages refer to any other Java packages or subpart of other packages (meaning outside the three)? To the extent this occurs, should those outside subparts be deemed to be "core" to the programming language?

9.   What cross-method, cross-class interdependencies exist at the implementation level in Java? Were any of these duplicated in the Android implementations? (The judge remembers no evidence on this point.)

10.   In Java, what interdependencies exist at the name/declaration level other than the inherited characteristics from the super class, interfaces, same class, etc.? Please explain.

11.   With respect to the Seventh Circuit decision in *American Dental Association*:

(A)   To what extent has it been adopted in the Ninth Circuit?

(B)   If the taxonomy in that decision was protectable, why shouldn't Sun's hierarchical outline of packages, classes, methods for the 37 API packages be protectable (other than perhaps the three core packages?

(C)   Did *ADA* hold that the numbering system alone (apart from the description) was copyrightable?

12.   With respect to the Ninth Circuit's decision in *Kapes*:

(A)   *Kapes* stated "Whether CDN's selection and arrangement of the price lists is sufficiently original to merit protection is not at issue." 197 F.3d at 1256. If that was not issue, what, if anything, did *Kapes* expressly say about SSO?

(B)   In what sense were the "prices CDN creates" in *Kapes* a "compilation" within the meaning of the Copyright Act (*see* 197 F.3d at 1260, second col.).

(C)   Didn't *Kapes* treat the coin prices as "compilations"? Please explain how this was done. Has Oracle abandoned the compilation argument herein?
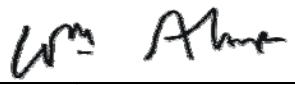
(D)   Was originality the only issue decided in *Kapes*?

13.   When discussing use of the SSO in the 37 API packages in Android to achieve "compatibility," what exactly are the parties referring to? Is it "compatibility" with programmers who write in the Java programming language? Or compatibility with pre-existing programs? If so, approximately what percent of pre-existing programs written for the Java platform are compatible with Android? Is it compatibility with the TCK? Or Java virtual machine? Or java compiler?

IT IS SO ORDERED.

Dated: May 3, 2012.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE