

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
 Plaintiff,)
 vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
 Defendant.)

-- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY--

Videotaped Personal Capacity deposition of
ANDREW E. RUBIN, taken at the law offices of
King & Spalding LLP, 333 Twin Dolphin Drive,
Suite 400, Redwood Shores, California,
commencing at 8:39 a.m., on Wednesday,
July 27, 2011, before Leslie Rockwood, RPR,
CSR No. 3462.

PAGES 1 - 296

1 ~~Foerster, counsel for Oracle.~~

2 ~~MS. TERAGUCHI: Yuka Teraguchi of Morrison &~~

3 ~~Foerster, counsel for Oracle.~~

4 ~~MR. HOLTZMAN: Steve Holtzman, Boies,~~

5 ~~Schiller & Flexner, counsel for Oracle America.~~ 08:40:33

6 ~~MR. REBLITZ-RICHARDSON: Beko~~

7 ~~Reblitz-Richardson, Boies, Schiller & Flexner, on behalf~~

8 ~~of Oracle America.~~

9 ~~MS. TIPTON: Jessica Tipton, Morrison &~~

10 ~~Foerster, on behalf of Oracle America.~~ 08:40:44

11 ~~MS. ANDERSON: Christa Anderson for Google,~~

12 ~~Inc., and the witness.~~

13 ~~MR. BABER: Bruce Baber, King & Spalding, for~~

14 ~~Google.~~

15 ~~MR. HWANG: Renny Hwang of Google.~~ 08:40:49

16 ~~THE VIDEOGRAPHER: Thank you.~~

17 ~~The witness will be sworn in, and we can~~

18 ~~proceed.~~

19 ~~THE REPORTER: Would you raise your right~~

20 ~~hand, please.~~

21 ~~You do solemnly state that the evidence you~~

22 ~~shall give in this matter shall be the truth, the whole~~

23 ~~truth and nothing but the truth, so help you God.~~

24 ~~THE WITNESS: Yes.~~

25 ~~THE REPORTER: Thank you.~~

1 A. Okay.

2 Q. ~~Before Google acquired Android Inc.~~

3 MS. ANDERSON: ~~Sorry, Counsel, before you~~
4 ~~start your question, could you clarify which deposition~~
5 ~~you're starting on? Because you've noticed a few things~~ 08:42:15
6 ~~for today.~~

7 MR. JACOBS: Yes.

8 MS. ANDERSON: ~~And I just want to make sure~~
9 ~~we're clear on the record.~~

10 MR. JACOBS: ~~Fair enough. So this is the~~ 08:42:22
11 ~~individual deposition, and I'll -- we'll be clear when we~~
12 ~~go into 30(b)(6) territory.~~

13 MS. ANDERSON: ~~Thank you, Counsel.~~

14 Q. BY MR. JACOBS: Before Google acquired
15 Android, did you conduct any review of Sun patents as 08:42:31
16 they might relate to your planned development of what
17 became the Android system?

18 A. No, I didn't.

19 Q. From the acquisition to the filing of the
20 lawsuit by Oracle America against Google on August 12th, 08:42:55
21 2010, did you conduct any review of Sun, later Oracle
22 America, patents as they related to Android -- the
23 Android system?

24 MS. ANDERSON: ~~And objection. Just caution~~
25 ~~the witness to the extent if responding to the question~~ 08:43:11

1 ~~would cause you to reveal any communications with~~
2 ~~counsel, I instruct you not to answer on grounds of~~
3 ~~privilege, but otherwise, you may answer the question.~~

4 THE WITNESS: No.

5 Q. ~~BY MR. JACOBS: Let's just spend a minute on 08:43:23~~
6 ~~that privilege instruction. One of the things I need to~~
7 ~~do today in order to do my job is to make a clear record~~
8 ~~of where you've been instructed not to answer, where~~
9 ~~you've followed that instruction, and where, but for the~~
10 ~~instruction, there might have been testimony, so that the 08:43:36~~
11 ~~Judge can look at the record and determine clearly where~~
12 ~~Google, as the litigant, is taking a position on the~~
13 ~~privilege.~~

14 ~~So your counsel just instructed you not to~~
15 ~~answer to the extent the answer might reveal privileged 08:43:48~~
16 ~~information, and you're following that instruction;~~
17 ~~correct?~~

18 A. ~~That's correct.~~

19 Q. ~~But for her instruction, would you have been~~
20 ~~able — would you have provided testimony on the question 08:43:59~~
21 ~~of a review of Sun, later Oracle America's patents in~~
22 ~~connection with Android?~~

23 A. ~~Can you ask the question in — I don't~~
24 ~~understand.~~

25 Q. ~~Did that instruction cause you to answer the 08:44:13~~

1 ~~question differently than had the instruction not been~~
2 ~~given?~~

3 A. ~~No.~~

4 Q. Why did you not conduct a review of Sun,
5 later Oracle America's patents as they might relate to 08:44:28
6 Android?

7 A. Well, look, I looked at the nature of Sun's
8 business, I looked at the nature of Oracle's business.
9 I'm a computer scientist. I graduated with a degree in
10 computer science. I had, in 1978, a Commodore PET 08:44:43
11 computer that, you know, used the basic language that had
12 a bytecode interpreter.

13 So I knew generally the area that I was
14 working in, obviously, and I didn't think there was any
15 conflict. So I didn't think there was a need to review 08:44:58
16 any patents. This stuff has existed for a very long
17 time.

18 Q. You were aware that Sun, later Oracle
19 America, had an extensive patent portfolio in the area of
20 Java; correct? 08:45:14

21 ~~MS. ANDERSON: Objection. Form.~~

22 THE WITNESS: I -- you know, again, I didn't
23 look specifically at the breadth of their intellectual
24 property. I assume, you know, if you're in a business,
25 you're going to protect your work. But also it was my 08:45:26

1 assumption that this work had been there, you know,
2 pretty much, you know, part of computer science that
3 you're taught in college.

4 Q. BY MR. JACOBS: So you were aware that Sun
5 had an extensive portfolio of Java-related patents? 08:45:39

6 ~~MS. ANDERSON: Objection. Form.~~

7 THE WITNESS: That's not what I said.

8 Q. BY MR. JACOBS: Were you -- were you not
9 aware of that?

10 A. I didn't -- I honestly didn't spend a lot of 08:45:48
11 time thinking about it.

12 □□ 155
(~~Exhibit PX305~~ was marked for
13 identification.)

14 Q. BY MR. JACOBS: ~~Exhibit 305~~ □□ 155 is an email
15 string. The last email on the string is dated 08:46:39
16 November 12, 2006.

17 Do you see that?

18 A. Yes.

19 Q. I'd like to ask you about your email to -- I
20 believe to Chris DiBona, but maybe you can help interpret 08:46:48
21 how the string should be read. It's the one from you
22 dated November 12, 2006 that reads as follows: "I've
23 been advised that Sun will offer a link exception to GPL
24 so that you can link your app with their class libraries
25 and not have the copy left force you to Open Source your 08:47:11

1 app. If they do not, then it's a play for a dual
2 license. They still have patents and trademarks."

3 Do you see that?

4 A. Uh-huh.

5 ~~Q. That is what you wrote, correct?~~ 08:47:17

6 ~~A. Correct.~~

7 ~~Q. And who did you write that to?~~

8 ~~MS. ANDERSON: I just want to -- objection.~~

9 ~~Form. The witness should have an opportunity to review~~
10 ~~the document before you begin asking a series of~~ 08:47:25
11 ~~questions about it.~~

12 ~~If you need an opportunity, go ahead. If you~~
13 ~~don't --~~

14 ~~THE WITNESS: It's quite a detailed document,~~
15 ~~but it mostly contains a forward of a press release made~~ 08:47:33
16 ~~by Sun Microsystems. I believe I was responding -- well,~~
17 ~~I was responding to the entire thread which had an alias~~
18 ~~on it, which was the Open Source team, which included~~
19 ~~Chris DiBona.~~

20 ~~Q. BY MR. JACOBS: And who is Greg Stein?~~ 08:47:54

21 ~~A. Greg Stein, I believe, was one of the product~~
22 ~~guys on the Open Source team. He was an evangelist for~~
23 ~~Open Source, I believe.~~

24 ~~Q. The Open Source team is -- what is the Open~~
25 ~~Source team?~~ 08:48:11

1 A. ~~It's a team of evangelists that is managed by~~
2 ~~Chris DiBona, and they go out and educate people about~~
3 ~~Open Source, what it means to be Open Source, how Open~~
4 ~~Source can benefit their businesses, and so forth.~~

5 Q. You wrote: "They still have patents and 08:48:24
6 trademarks." Correct?

7 A. That's correct.

8 Q. And the "they" is Sun; correct?

9 A. That's correct.

10 Q. ~~And you were saying -- you were noting this 08:48:31~~
11 ~~in order to make sure that people understood that there's~~
12 ~~a range of intellectual property rights associated with~~
13 ~~the program in question; correct?~~

14 MS. ANDERSON: ~~Objection to form.~~

15 THE WITNESS: ~~No, that's not correct. 08:48:47~~

16 Q. BY MR. JACOBS: ~~Well, what did you mean by~~
17 ~~"they still have patents and trademarks"?~~

18 A. ~~Well, the email was discussing -- so this is~~
19 ~~in response to Sun basically announcing that they were~~
20 ~~Open Sourcing parts of Java, and the conversation was 08:48:58~~
21 ~~about Sun's dual license strategy. Because with GPL,~~
22 ~~it's effectively useless to Open Source something under~~
23 ~~GPL and use it in embedded devices like cell phones~~
24 ~~because there's this trick in the GPL which is of viral~~
25 ~~nature. 08:49:17~~

1 ~~access, and then forcing people to come back to Sun~~
2 ~~because the threat of a suit, if you adopt their stuff,~~
3 ~~was real.~~

4 Q. When you wrote "they still have patents and
5 trademarks," what was in your mind about what patents Sun 08:51:39
6 had?

7 A. Look, like I said before, I assume they're
8 running a business, they're inventing intellectual
9 property, they're protecting it through the patent
10 system. Through GPL, I didn't know what they were, but I 08:51:53
11 knew that it was dangerous to use the stuff without
12 knowing exactly what it was.

13 So effectively you have to go back to Sun,
14 ask them what they considered their intellectual property
15 and, you know, try to figure out what the trick was if 08:52:06
16 you wanted to use the technology.

17 Q. ~~Now, by that time, by 2006, you had applied~~
18 ~~for patents over the course of your career, correct?~~

19 A. ~~Yes.~~

20 Q. ~~You had applied for a patent -- for several 08:52:15~~
21 ~~patents while you were at Danger, correct?~~

22 A. ~~Yes.~~

23 Q. ~~And since Google acquired Android, you've~~
24 ~~applied for patents, correct?~~

25 A. ~~Google has applied for patents with my name 08:52:29~~

1 ~~intellectual property?~~

2 ~~MS. ANDERSON: Objection. Form.~~

3 ~~THE WITNESS: Well, look, I mean, so this~~
4 ~~article looks great. I haven't read it. All sorts of~~
5 ~~analysts are making speculations about Sun's business.~~ 08:55:04
6 ~~This is dated 2008. My email is 2006. I don't think~~
7 ~~they're related at all.~~

8 Q. BY MR. JACOBS: But my question is: As of
9 November 12th, 2006, when you wrote "they," referring to
10 Sun, "still have patents," were you aware that Sun had a 08:55:18
11 broad and deep portfolio of intellectual property?

12 ~~MS. ANDERSON: Objection. Form.~~

13 THE WITNESS: Yeah, I was not.

14 Q. BY MR. JACOBS: You were not?

15 A. I didn't know how -- I didn't know the 08:55:26
16 breadth of Sun's portfolio.

17 Q. Were you aware that -- sorry.

18 A. I never investigated the breadth of Sun's
19 portfolio.

20 Q. To the best of your knowledge, between 08:55:35
21 Google's acquisition of Android and the filing of the
22 lawsuit in this action, did Google ever investigate
23 Sun's, later Oracle America's patent portfolio as it
24 might relate to Android?

25 ~~MS. ANDERSON: Objection. Again caution to~~ 08:55:53

1 ~~the witness to the extent that responding to this~~
2 ~~question would cause you to reveal any communications~~
3 ~~with counsel, I instruct you not to answer on grounds of~~
4 ~~privilege. But otherwise, you may answer.~~

5 THE WITNESS: Yeah, of the parts of Google 08:56:04
6 that I manage and I operate, the -- there was no
7 instruction to go investigate the breadth of Sun's patent
8 portfolio.

9 Q. BY MR. JACOBS: You referred to an
10 instruction. You said there was no instruction? 08:56:17

11 A. Yeah. Me as managing a division with Google
12 didn't instruct anybody to go off and do something. I
13 have no knowledge of somebody underneath me going off and
14 doing something to investigate the breadth of Sun's
15 portfolio. 08:56:32

16 Q. ~~The -- and you're following your counsel's --~~
17 ~~I just need to do this privilege thing again. You're~~
18 ~~following your counsel's instruction?~~

19 A. ~~Yeah. Obviously, like I don't have insight~~
20 ~~into every -- you know, every team at Google. These are~~ 08:56:43
21 ~~large organized teams so they don't report to me. If~~
22 ~~there's another team that goes off and does something, I~~
23 ~~may not know about it.~~

24 Q. ~~So but for your counsel's instruction, would~~
25 ~~your answer have been different to my question?~~ 08:56:56

1 ~~answer the question?~~

2 ~~THE WITNESS: Yes, I am.~~

3 ~~Q. BY MR. JACOBS: The lawsuit was filed on~~
4 ~~October 12, 2010 excuse me, August start over.~~

5 The lawsuit was filed on August 12, 2010. 09:02:43

6 After the lawsuit was filed, did you conduct any review
7 of Oracle America's patent portfolio in connection with
8 Android development?

9 ~~MS. ANDERSON: Objection to the extent that~~
10 ~~responding to this question would cause you to reveal any~~ 09:03:04
11 ~~communications with counsel, I instruct you not to answer~~
12 ~~on grounds of privilege. Otherwise, you may answer.~~

13 THE WITNESS: I mean, look, all right, you
14 asked the question before whether I have personally done
15 reviews of the legal situation, and I answered no. It 09:03:18
16 didn't change throughout the release cycles whether I did
17 or not.

18 Q. BY MR. JACOBS: So and just to be clear, my
19 earlier question was before the lawsuit, and now I was
20 asking after the lawsuit, and your answer is the same: 09:03:30
21 You have conducted no review?

22 A. I personally am not responsible for legal
23 reviews for the Android system.

24 ~~Q. Are you aware of any review that has been~~
25 ~~conducted of the Android system in view of Oracle~~ 09:03:43

1 ~~enhancements, especially since we've been sued by Oracle~~
2 ~~America, before we go off in a particular direction?~~

3 ~~MS. ANDERSON: Objection. Form. And~~
4 ~~instruct the witness not to answer to the extent it calls~~
5 ~~for any communications or would reveal any communications~~ 09:04:48
6 ~~with any counsel on the grounds of privilege.~~

7 ~~THE WITNESS: I mean, generally speaking, we~~
8 ~~see software development as an innovation process so we~~
9 ~~don't really second-guess innovation. We do the~~
10 ~~innovation -- we do it in a way that, you know, our~~ 09:05:01
11 ~~education and training, you know, teaches us to do, and~~
12 ~~our goal is just to build great products that consumers~~
13 ~~love.~~

14 ~~Q. BY MR. JACOBS: So the answer to my question~~
15 ~~is "no"?~~ 09:05:11

16 ~~MS. ANDERSON: Objection. Form. And the~~
17 ~~same privilege instruction.~~

18 ~~Q. BY MR. JACOBS: Are you --~~

19 ~~A. I don't know. You can ask that question~~
20 ~~again.~~ 09:05:21

21 ~~Q. Okay. Fair enough. Let's start over.~~

22 ~~As you have added functionality to Android~~
23 ~~over time, have you ever conveyed to anyone at Google, as~~
24 ~~we're adding enhancements, we should look at Oracle~~
25 ~~America's patents and decide whether we're going to go~~ 09:05:41

1 off in a particular direction or not?

2 ~~MS. ANDERSON: Objection and instruct the~~
3 ~~witness not to answer to the extent it would cause you to~~
4 ~~reveal any communications with counsel on the grounds of~~
5 ~~privilege.~~

09:05:54

6 THE WITNESS: I mean, generally speaking, the
7 way you do innovation isn't you don't go look at somebody
8 else's work. You just do innovation in your own little
9 world and make sure it's the best it can possibly be. So
10 the answer would be no.

09:06:05

11 Q. ~~BY MR. JACOBS: Similarly, as you have~~
12 ~~expanded the markets in which Android is applied, say, to~~
13 ~~tablets, have you asked or conveyed that any such review~~
14 ~~should be conducted?~~

15 ~~MS. ANDERSON: Objection. Form. And also~~
16 ~~same instruction on grounds of privilege. You shouldn't~~
17 ~~disclose communications with counsel.~~

09:06:17

18 ~~THE WITNESS: It's true for every Android~~
19 ~~release, independent of what the form factor it's~~
20 ~~released in.~~

09:06:27

21 Q. ~~BY MR. JACOBS: And by "form factor," you're~~
22 ~~referring to, for example, tablets as opposed to~~
23 ~~handsets?~~

24 A. ~~Yeah, you know, four inch screens versus~~
25 ~~ten-inch screens. There's no difference, in my mind.~~

09:06:37

1 ~~negotiations with the execs.~~

2 ~~Q. And that's so that you can protect the option~~
3 ~~of going clean room, correct?~~

4 ~~A. Yeah. I don't want to taint myself.~~

5 ~~Q. And we've talked about your clean room, the~~ 15:57:11
6 ~~way the clean room got established and how you~~
7 ~~communicated the rules of the clean room.~~

8 One thing we didn't talk about specifically
9 in the context of clean room is patent issues. So did
10 you have an understanding that the clean room would bear 15:57:23
11 on the question of whether Android would infringe
12 Sun/Oracle America patents?

13 ~~MS. ANDERSON: Objection. Form.~~

14 ~~Also, caution the witness to the extent~~
15 ~~responding would cause you to reveal communication with~~ 15:57:36
16 ~~counsel, I instruct you not to answer on the grounds of~~
17 ~~attorney-client privilege.~~

18 THE WITNESS: No. Generally speaking, a
19 clean room approach doesn't protect against patents.
20 There's no expectation. 15:57:47

21 As I said previously, VM technology has been
22 around forever. I didn't think the stuff that we were
23 doing was going to be a violation of anybody's IP.

24 ~~Q. BY MR. JACOBS: And so that was based without~~
25 ~~reviewing the IP? That was kind of an intuition on your~~ 15:57:56

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I declare under the penalty of perjury
under the laws of the State of California that the
foregoing is true and correct.

Executed on August 31, 2011,
at Mountain View, CA.



SIGNATURE OF THE WITNESS

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)

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I, LESLIE ROCKWOOD, CSR No. 3462, do hereby certify:

That the foregoing deposition testimony was taken before me at the time and place therein set forth and at which time the witness was administered the oath;

That testimony of the witness and all objections made by counsel at the time of the examination were recorded stenographically by me, and were thereafter transcribed under my direction and supervision, and that the foregoing pages contain a full, true and accurate record of all proceedings and testimony to the best of my skill and ability.

I further certify that I am neither counsel for any party to said action, nor am I related to any party to said action, nor am I in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name this 28th day of July, 2011.



LESLIE ROCKWOOD, CSR. NO. 3462

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I N D E X

WEDNESDAY, JULY 27, 2011

WITNESS

EXAMINATION

ANDREW E. RUBIN, Personal Capacity

By Mr. Jacobs

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