

EXHIBIT B

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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.)
-----)

ATTORNEYS' EYES ONLY

Videotaped Deposition of ANDREW E. RUBIN,
taken at 333 Twin Dolphin Drive, Redwood
Shores, California, commencing at 9:31 a.m.,
Tuesday, April 5, 2011, before Leslie
Rockwood, RPR, CSR No. 3462.

PAGES 1 - 149

1 APPEARANCES OF COUNSEL:

2

3 FOR THE PLAINTIFF ORACLE AMERICA, INC.:

4

5 BOIES SCHILLER & FLEXNER LLP

6 BY: STEVEN C. HOLTZMAN, ESQ.

7 BEKO REBLITZ-RICHARDSON, ESQ.

8 1999 Harrison Street, Suite 900

9 Oakland, California 94612

10 (510) 874-1000

11 sholtzman@bsfllp.com

12 brichardon@bsfllp.com

13

14

15 MORRISON & FOERSTER LLP

16 BY: MARC DAVID PETERS, ESQ., PH.D.

17 755 Page Mill Road

18 Palo Alto, California 94304-1018

19 (650) 813-5600

20 mdpeters@mofocom

21

22

23

24

25

1 APPEARANCES OF COUNSEL (CONTINUED) :

2
3 FOR THE DEFENDANT GOOGLE, INC. :

4
5 KING & SPALDING, LLP

6 BY: BRUCE W. BABER, ESQ.

7 1180 Peachtree Street, NE

8 Atlanta, Georgia 30309-3521

9 (404) 572-4826

10 bbaber@kslaw.com

11
12 BY: SCOTT T. WEINGAERTNER, ESQ.

13 1185 Avenue of the Americas

14 New York, New York 10036-4003

15 (212) 556-2227

16 sweingaertner@kslaw.com

17
18 BY: STEVEN T. SNYDER, ESQ.

19 100 North Tryon Street, Suite 3900

20 Charlotte, North Carolina 28202

21 (704) 503-2630

22 ssnyder@kslaw.com

23

24

25

1 APPEARANCES OF COUNSEL (Continued):

2

3 RENNY HWANG, ESQ.

4 GOOGLE ASSOCIATE LITIGATION COUNSEL

5 1600 Ampitheatre Parkway

6 Mountain View, California 94043

7 (650) 253-2551

8 renyhwang@google.com

9

10

11 ALSO PRESENT:

12

13 ALEXEI DIAS, VIDEOGRAPHER

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1 MR. SNYDER: ~~Steve Snyder, King & Spalding,~~
2 ~~for Google.~~

3 MR. HWANG: ~~Renny Hwang for Google.~~

4 THE VIDEOGRAPHER: ~~Thank you. The witness~~
5 ~~will be sworn in, and we can proceed.~~ 09:32:13

6 THE REPORTER: ~~Would you raise your right~~
7 ~~hand, please.~~

8 You do solemnly state that the evidence you
9 shall give in this matter shall be the truth, the whole
10 truth and nothing but the truth, so help you God.

11 THE WITNESS: ~~Yes.~~

12 THE REPORTER: ~~Thank you.~~

13 EXAMINATION

14 BY MR. HOLTZMAN:

15 Q. ~~Good morning. Could you please state your~~ 09:32:26
16 ~~full name and spell your last name for the record.~~

17 A. ~~Sure. It's Andrew Edward Rubin, R-U-B-I-N.~~

18 Q. ~~Have you ever had your deposition taken~~
19 ~~before?~~

20 A. ~~Yes.~~ 09:32:37

21 Q. ~~How many times?~~

22 A. ~~Probably about four times.~~

23 Q. ~~Okay. Let me just very quickly then cover a~~
24 ~~few basic ground rules. I'll be asking questions today.~~
25 ~~If at any time you don't understand a question I ask, let~~ 09:32:48

1 Q. And you over time were personally involved in
2 discussions with Sun on behalf of Google with regard to
3 Android; correct?

4 A. Yes, I led the discussions with Sun regarding
5 Android. 09:38:08

6 Q. And you have been personally involved in
7 discussions with Oracle regarding Android on behalf of
8 Google; correct?

9 A. Yes. Again, I led those discussions as well.

10 ~~Q. Okay. So between -- when was the first time~~ 09:38:18
11 ~~you had a discussion with either Sun or Oracle regarding~~
12 ~~what became Android?~~

13 ~~A. Sure. The discussions, I think, were --~~
14 ~~probably the earliest discussions were -- can you ask the~~
15 ~~question again? Sorry.~~ 09:38:38

16 ~~Q. When was the first time -- I can rephrase it.~~
17 When was the first time you had a discussion
18 with Sun regarding what became Android?

19 A. When Android was a start-up company, probably
20 in about 2000 -- either late 2004 or early 2005. 09:38:49

21 Q. Okay. Actually, let me come back to that
22 because I want to explore that separately.

23 Between 2005, when you started at Google, and
24 now, about how many discussions, in person or by phone,
25 did you participate in with anyone from Sun or Oracle 09:39:09

1 relating to what became Android?

2 A. Sure. So the early discussions were directly
3 with Sun. The subject matter discussed was about a Sun
4 product. So Oracle didn't come into the picture until
5 they acquired Sun. So the early discussions in -- I 09:39:26
6 think -- I'm vague on the actual dates.

7 Q. Okay.

8 A. But -- but you asked several questions. So
9 the discussions were probably in late 2005, early 2006,
10 is when they started or really kind of heated up. 09:39:41
11 Because, again, I was in discussions when we were a
12 start-up company before the acquisition.

13 But the second part of your question was how
14 many discussions did we have in that time frame, and it
15 was a handful. It was probably about five or six from 09:39:56
16 the 2005 to 2006 time frame.

17 Q. Okay. And after that, when was the next time
18 that you had discussions with anybody from Sun, if at
19 all?

20 A. Again, vague on the precise dates, but in 09:40:06
21 the -- in around the 2008 time frame, which was around
22 the time Android launched, we entered into another round
23 of discussions after Sun approached us.

24 Q. Okay. So I'm sorry, so Android launched in
25 2008? 09:40:22

1 ~~security mechanism or the security model; is that~~
2 ~~correct?~~

3 A. ~~Yes. And those are the two, to my~~
4 ~~recollection.~~

5 Q. ~~That's fine. Did you ever think that issues~~ 09:56:51
6 ~~relating to patent infringement contributed to the end of~~
7 ~~those negotiations in -- this would have been in 2006.~~

8 A. ~~No, I did not.~~

9 Q. ~~Did you ever say that you negotiated with Sun~~
10 ~~and decided to walk away after Sun threatened Google with~~ 09:57:22
11 ~~patent violations?~~

12 A. ~~Huh-uh, no. Sorry, can you ask the question~~
13 ~~again?~~

14 Q. ~~Did you ever say that you negotiated with~~
15 ~~Sun? I'm sorry. Yes. I'm sorry. Strike that and start~~ 09:57:35
16 ~~again.~~

17 ~~Did you ever say that you negotiated with Sun~~
18 ~~and decided to walk away after Sun threatened Google with~~
19 ~~patent violations?~~

20 A. ~~Did I ever say it? Not to my knowledge, no.~~ 09:57:47

21 MR. HOLTZMAN: Okay. I'll ask the court
22 reporter to mark as Oracle Deposition Exhibit Number 3 a
23 two-page document Bates Numbered Google 0200020474.

24 □□ 2 □□
~~(Exhibit 3 marked.)~~

25 Q. BY MR. HOLTZMAN: Do you recognize Oracle 09:58:55

1 ~~Exhibit 3?~~ ☐☐ 2☐☐

2 A. I'm refreshing my memory now. Okay.

3 Q. So what is it?

4 A. It looks like an email thread between two of
5 my engineers or three of my engineers and myself. 09:59:29

6 Q. And the three engineers are Bob Lee, Brian
7 Swetland, and Dan Bornstein; is that correct?

8 A. Correct.

9 Q. And what's the date of that email?

10 A. It was originally -- it appears originally 09:59:43
11 August 11th, 2007.

12 ~~Q. And so there are two emails represented in~~
13 ~~this document, correct?~~

14 ~~A. It's an email string.~~

15 ~~Q. String. Fair enough. That's fine. That's 09:59:55~~
16 ~~fine. And I'm interested -- I just wanted to ask you~~
17 ~~about the top email here. That's an email from you;~~
18 ~~correct?~~

19 ~~A. Yes.~~

20 Q. And if you go down to the last paragraph 10:00:04
21 before your name, Andy?

22 A. Uh-huh.

23 Q. Just read that.

24 A. I'm sorry, which paragraph does that start
25 with? 10:00:18

1 Q. Where it says "tricky no"?

2 A. It says: "Why would we want to do anything
3 to support this behavior? We want to distance ourselves
4 as much as possible from Sun."

5 Q. All right. And then you have a P.S. after 10:00:27
6 that. Could you read that.

7 A. "We negotiated nine months with Sun and
8 decided to walk away after they threatened to sue us over
9 patent violations."

10 Q. Okay. Now, the reference to negotiating nine 10:00:38
11 months with Sun, what does that refer to?

12 A. I imagine that refers to the time frame that
13 we were discussing, between 2005 and 2006.

14 Q. And then when you say you decided to walk
15 away after they threatened to sue us over patent 10:00:57
16 violations, what were you referring to there?

17 A. Well, during our discussions -- I mean, first
18 of all, this -- let me put this in context. This was a
19 message that I had -- that I had sent in reaction to two
20 strings that my engineers had sent me in this email 10:01:15
21 thread, and what they're -- what they were bringing to my
22 attention was some public statements Sun was making and
23 what the -- what the community, the Java community's
24 reaction was to Sun's TCK licensing announcement. And I
25 don't recall exactly what the announcement was, but this 10:01:41

1 thread started out with a public community rumor, I would
2 say.

3 Q. Okay. So I got that background, let me go
4 back now to the question.

5 A. And my response was, to my engineers, was 10:01:58
6 basically to -- as a manager, to provide some guidance to
7 them on basically getting them to move on and understand
8 that we were no longer -- there was no longer really an
9 opportunity to partner with Sun.

10 In my discussions with Sun, I don't believe 10:02:15
11 Sun ever threatened to sue us over patent violations. I
12 think I was choosing those words to help my engineering
13 team move along and, you know, continue their development
14 effort on other technologies.

15 During this -- the discussions, by the way, I 10:02:35
16 mean, in normal business discussions, I think there's --
17 I think there's a line where when you're in a partnership
18 discussion you don't say, you know, "do this or we're
19 going to sue you," but I do think you make statements and
20 vague assertions on the consequences or the evolution 10:02:55
21 of the partnership in cases the companies agree to
22 disagree.

23 I did feel during the Sun discussions that
24 there was a threat that Sun would pursue legal action
25 if -- if -- even if the legal action was frivolous, in 10:03:20

1 order to successfully complete the partnership.

2 ~~Does that make sense?~~

3 Q. ~~I think so. Let me see if I can drill down~~
4 ~~on that a little bit.~~

5 ~~First of all, you referred to even if the~~ 10:03:35
6 ~~action was frivolous. Is that your characterization?~~

7 A. ~~Yes, completely my characterization.~~

8 Q. ~~You're not saying that Sun threatened or~~
9 ~~implied that it might assert frivolous claims, in its~~
10 ~~words, against Google, correct?~~ 10:03:50

11 A. ~~You know, again, I'm really not qualified to~~
12 ~~determine what's frivolous or not.~~

13 Q. Sure. Okay. So I just want to go back, and
14 I just want to make sure I understand. When you wrote
15 here that Sun threatened to sue us or sue Google over 10:04:03
16 patent violations, what did you mean?

17 A. It was probably more along the lines of our
18 business discussions had concluded. They concluded for
19 the two reasons that I stated to you, the security
20 control and the third-party developer ecosystem control. 10:04:17
21 As the -- as the discussions concluded, it was implied,
22 probably is the best way to say, that Sun would or could,
23 I should say, choose a legal solution to bring the
24 partnership back together.

25 Q. ~~And what in your understanding was the nature~~ 10:04:49

1 ~~machine technology, and that virtual machine technology~~
2 ~~virtually executed machine instructions that were defined~~
3 ~~by Sun.~~

4 ~~I was, you know, as an accelerator interested~~
5 ~~in Sun open sourcing their virtual machine technology as~~ 12:26:17
6 ~~well, but we never reached a conclusion on whether that~~
7 ~~was possible or not.~~

8 Q. ~~What was it about the Sun virtual machine~~
9 ~~that would serve as an accelerator?~~

10 A. ~~It was implemented. It was actually a~~ 12:26:33
11 ~~shipping product.~~

12 Q. Now, going back to the question about patent
13 rights, did you have any discussion with Sun about
14 whether there were any patents relating to the Sun
15 virtual machine? 12:26:45

16 A. You know, I do recall some discussions around
17 patents. One of the ideas of partnering with Sun was to
18 basically -- you know, if Google set out -- you know, if
19 Android set out as a start-up company, then -- to build
20 an open platform, then became part of Google, and the 12:27:02
21 role that Google was to basically continue to build the
22 open platform, there was a notion of a partnership where
23 we could actually license both technology,
24 implementation, and patents, where the patents would be
25 used to protect the open platform. 12:27:22

1 So I think there was some discussions,
2 especially in the 2008 meetings, where Sun would -- would
3 basically assign some patents to Google to help protect
4 Android in the open market should somebody come along and
5 try to sue. 12:27:43

6 ~~Q. To what extent did that provide value to~~
7 ~~Google or would that have provided value to Google?~~

8 ~~A. Well, if Google's investing its resources in~~
9 ~~building an open platform, it makes sense to invest some~~
10 ~~in protecting the open platform once it comes out so we~~ 12:28:01
11 ~~make sure that, you know, that platform survives.~~

12 Q. Okay. Now, you understood from your
13 discussions with Sun that Sun offered licenses governing
14 the use of Sun copyrights; correct?

15 A. I viewed the license -- in the conversations 12:28:17
16 with Sun, it was relayed to me that Sun licenses
17 technology and the technology comes for a price.

18 Q. Okay. And you didn't unpack whether that
19 technology what's, involved there is copyrights or
20 patents or trademarks or whatever? 12:28:36

21 A. I just viewed it as a bundle. And again, I'm
22 not a lawyer so it's hard to dissect that stuff. It's --
23 you know, it's a middle-ware component of a platform, and
24 in my view, for a price, it could accelerate our whole
25 effort. 12:28:49

1 Q. Okay. Now, let's move past the 2005, 2006
2 time frame. You'll have to remind me, what was the next
3 period of time where you had discussions with Sun?

4 A. It was immediately prior to the Oracle
5 acquisition of Sun. I don't remember specifically the 12:33:41
6 date. My sense is it was either 2008 -- mid to late 2008
7 or early 2009 and -- yeah, that was the time frame.

8 ~~Q. Okay. And who initiated those discussions?~~

9 ~~A. The Sun representatives.~~

10 ~~Q. Do you remember who from Sun?~~ 12:34:00

11 ~~A. It was Vineet, Eric, who I believe was their~~
12 ~~then CTO. The company had kind of gone through some~~
13 ~~changes, and one other person, but basically it was the~~
14 ~~technology owners of Java and Vineet, who as you know,~~
15 ~~was the salesperson.~~ 12:34:24

16 ~~Q. And who from Google participated in those~~
17 ~~discussions?~~

18 ~~A. Myself, primarily, and there was one other~~
19 ~~person probably related to -- that's interesting. I'm~~
20 ~~imagining, you know, I know the meeting room we sat in,~~ 12:34:42
21 ~~and I know there were four of us -- five of us. Somebody~~
22 ~~else from Google's side. It was either -- I'm sorry, I~~
23 ~~don't know. I don't remember.~~

24 ~~Q. Okay. And what was the subject of that~~
25 ~~discussion?~~ 12:34:57

1 ~~WWW.google.com when they want to do a search for~~
2 ~~something.~~

3 Q. ~~Is that the only metric you have for~~
4 ~~measuring the number of Android-enabled devices?~~

5 A. ~~That's one. I think another one is how many~~ 13:13:30
6 ~~people use Gmail, how many people view YouTube videos.~~

7 ~~So again, these are independent services that are kind of~~
8 ~~tied together to Google's back end, and Google's back end~~
9 ~~is the destination. And when a packet lands -- when an~~
10 ~~IP packet lands on our, you know, back end, we know it.~~ 13:13:47

11 Q. ~~And you know that's coming from an Android~~
12 ~~device?~~

13 A. ~~Generally speaking, yes.~~

14 Q. Okay. Now, you mentioned earlier that
15 after -- I think you said you had two meetings at Google 13:13:58
16 with Mr. Kurian; correct?

17 A. Uh-huh. Two or maybe three, but I believe --
18 I'm vague. Definitely two. I'm not sure three.

19 Q. Okay. Then you said you had another meeting
20 at Oracle; correct? 13:14:13

21 A. Correct.

22 Q. And who attended that meeting?

23 A. Just myself.

24 Q. From Google, just you?

25 A. Yes.

1 Q. And who attended from Oracle?

2 A. A whole bunch of people that I don't recall
3 their names. I think it was pretty much all the product
4 owners and the various business owners at Oracle.

5 Mr. Kurian was there as well, as well as their general 13:14:32
6 counsel.

7 Q. Okay. Oracle general counsel?

8 A. Yes.

9 Q. About how long did that meeting last?

10 A. It was relatively short, 40 minutes, 13:14:42
11 45 minutes.

12 Q. And what was discussed during that meeting?

13 A. Well, so the -- so the two teams couldn't
14 agree on Oracle's ask, which was, you know, the realm of
15 100 million a year plus, you know, search REV share and 13:15:00
16 things like that. And so this meeting was basically, I
17 think, a last ditch effort for Oracle to engage with
18 Google in a partnership.

19 And Oracle surprised me by having their --
20 their general counsel there. And the statement was made 13:15:27
21 that they had prepared a lawsuit against us for copyright
22 and patent infringement and that they were willing to
23 issue the lawsuit against us unless we could come to
24 terms on the financial amount.

25 ~~Q. How did you respond?~~ 13:15:45

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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 May 11, 2011,
at 1625 Charleston Road, Mountain View CA 94043



SIGNATURE OF THE WITNESS

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

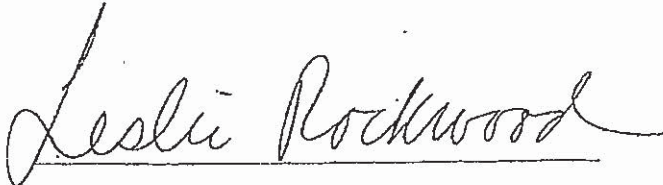
4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:

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

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

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

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 12th day of April, 2011.

22
23 
24

25 LESLIE ROCKWOOD, CSR. NO. 3462