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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE'S OPPOSITION TO ORACLE'S
MOTION IN LIMINE REGARDING
HINKMOND WONG AND NOEL POORE**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

1 Oracle moves preemptively to preclude legitimate Phase 2 testimony by attacking certain
2 of Google's exhibits disclosed for use with two of Oracle's witnesses. The Court should deny
3 Oracle's motion on several grounds:

- 4 1. Mindful of the Court's prior direction, Google does not intend to elicit testimony
5 on equitable issues before the jury;
- 6 2. Oracle's motion, which seeks to block examination of witnesses on documents that
7 have already been admitted into evidence, is premature without the broader
8 context of the testimony;
- 9 3. Oracle may object during the taking of testimony; and
- 10 4. Though Oracle has mostly focused on emails allegedly showing awareness of
11 patents and investigations that it claims Google should have performed, Google
12 will continue to focus its examinations on exposing the many technical weaknesses
13 in Oracle's patent infringement case.

14 This opposition focuses on the last two of these grounds.

15 **I. ORACLE'S NONSPECIFIC REQUEST TO "CONFINE" TESTIMONY TO**
16 **"RELEVANT" ISSUES IS UNWORKABLE.**

17 Oracle has not asked to prevent either Mr. Poore or Mr. Wong from testifying and has no
18 basis for doing so. Oracle's attempt to preemptively limit the questioning of Messrs. Poore and
19 Wong to only what it views as relevant is unworkable. To the extent that Oracle is only now
20 objecting to Google's supplemental witness list disclosure from February 23, 2012, that objection
21 is untimely and not sufficiently articulated to allow Google to respond on the merits.

22 Despite Oracle's claims based on its spin on some of the documents Google has disclosed
23 for use with these witnesses, Google will continue to focus its examinations on the lack of
24 technical merit in Oracle's patent case. In particular, Google will seek testimony in the form of
25 admissions on technical issues by the Oracle witnesses in addition to any other relevant
26 knowledge. For its part, Oracle led off its patent case with examinations of Google employees on
27 the issue of awareness of Sun patents and investigations that Oracle apparently contends should
28 have been performed (though Oracle has cited no precedent suggesting that such investigations

1 are a legal requirement). That door is now wide open, and Google must be permitted to address
2 issues that have opened with it.

3 **II. ORACLE’S BROAD CATEGORIES OF DOCUMENT OBJECTIONS SHOULD**
4 **BE URGED INDIVIDUALLY IF AND WHEN EACH DOCUMENT IS OFFERED.**

5 Oracle’s complaints appear to arise largely from a fear that the jury will learn that Oracle
6 engineers Poore and Wong, who worked extensively on Sun/Oracle’s mobile phone efforts, spent
7 significant time studying Android. This is not a legitimate basis for wholesale exclusion of
8 exhibits, and at any rate, was invited by testimony elicited by Oracle.

9 In the case of Mr. Poore, his prior involvement with Android is relevant not only to the
10 issues being tried in Phase 2, but was also squarely put into play when Oracle called Mr. Poore as
11 a purported *expert* on alleged “performance testing” he conducted in support of Oracle’s litigation
12 strategy. The jury is entitled to learn the details of Mr. Poore’s prior involvement with Android,
13 and Oracle cannot heard to complain now that Mr. Poore’s prior Android experience should be
14 kept from the jury.

15 Mr. Wong likewise had prior involvement studying Android. To the extent any of the
16 presently designated exhibits may delve into or touch upon technical observations regarding
17 Android or relevant technology, Google should be permitted to explore those observations,
18 subject to objections made at trial by Oracle. As noted above, Google is mindful of the Court’s
19 direction on equitable issues in Phase 2 and does not intend to elicit testimony of an equitable
20 nature before the jury.

21 **III. CONCLUSION**

22 Oracle’s motion should be denied.

23 Dated: May 9, 2012

KEKER & VAN NEST LLP

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25 By: /s/ Robert A. Van Nest
ROBERT A. VAN NEST

26 Attorneys for Defendant
27 GOOGLE INC.
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