Exhibit D

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19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.   Case No. CV 10-03561 WHA

23   Plaintiff,   **PLAINTIFF'S RESPONSES AND
                                           OBJECTIONS TO DEFENDANT
24   v.   GOOGLE INC.'S FIRST SET OF
                                           INTERROGATORIES TO
25 GOOGLE INC.   PLAINTIFF ORACLE AMERICA,
                                           INC. (NOS. 1-10)**
26   Defendant.
                                           Dept.: Courtroom 9, 19th Floor
27   Judge: Honorable William H. Alsup

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1   PROPOUNDING PARTY: Defendant GOOGLE INC.

2   RESPONDING PARTY: Plaintiff ORACLE AMERICA, INC.

3   SET NO.:   One (Nos. 1-10)

4   Pursuant to Rule 33 Federal Rules of Civil Procedure, Plaintiff Oracle America, Inc.

5   ("Oracle") hereby responds to Defendant Google Inc.'s ("Google") First Set of Interrogatories.

6   **INTERROGATORY NO. 1:**

7   State in detail Oracle's factual bases for each allegation of damage or harm that Oracle

8   claims to have suffered as a result of any act or omission of Google.

9   **RESPONSE TO INTERROGATORY NO. 1:**

10   As Oracle's damages and harm contentions are subject to ongoing discovery and expert

11   analysis, Oracle objects to this interrogatory as premature. Oracle has not yet completed its

12   investigation of the documents and facts relevant to the claims and defenses asserted in this

13   action, and has not received relevant documents and information from Google or third parties.

14   Accordingly, Oracle's responses are based on the information reasonably available at this time

15   and Oracle will supplement this response as appropriate under the Federal Rules of Civil

16   Procedure. Subject to these objections, Oracle responds as follows:

17   Oracle is entitled to all legal, statutory, and equitable remedies available. This potentially

18   includes, for example, damages in the form of lost profits Oracle would have made without the

19   infringement, the value of or a reasonable royalty for a license for the rights infringed, and

20   disgorgement of profits made by Google that are attributable to the infringement. The relevant

21   factual inquiries are with respect to past and future damages on a worldwide basis. In addition,

22   because Google's infringement has been willful and intentional, Oracle is entitled to recover

23   treble damages, pursuant to 35 U.S.C. § 284. Oracle is also entitled to recover the costs of suit,

24   prejudgment interest, and attorney's fees under 35 U.S.C. § 285. Oracle also seeks injunctive

25   relief.

26   The factual basis for recovery of the value of the infringed intellectual property includes

27   evidence relating to the reasonable royalty amount a willing buyer would have been reasonably

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required to pay a willing seller in a hypothetical negotiation for a license to the infringed property at the time of the infringement. These facts include, for example:

- the licensing history for Java and other patents and software, viewed in the context of conditions necessary to protect Oracle's and Sun's business model and marketing program for Java, including the importance of preventing fragmentation of Java;

- the amount Oracle and/or Sun invested to obtain, develop and improve the intellectual property at issue as well as Java more generally;

- the value to Oracle and/or Sun of protecting Java and related or ancillary products and services from fragmentation;

- amounts Google has recouped and expected to earn as a consequence of using the infringed intellectual property in Android, including Google's use of and plans to use Android (and the infringed intellectual property) to promote sales and licensing of other Google products, such as search and advertising, and reap revenue from third-party development and other sources;

- licenses obtained by Google for other intellectual property;

- the availability, viability and cost of reasonable non-infringing alternatives;

- the relationship between Oracle and Google in the provision of platform software for mobile and other devices;

- the substantial value (both absolutely and as a portion or component of Android) and remaining economic life of the intellectual property at issue;

- the short and longer term business strategies of Oracle and Google, including strategies for realizing economic return including licenses; and

- actual and expected demand for mobile and other devices using Android, and the actual and expected popularity of those devices.[1]

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[1] *See generally Mobile Entertainment*, "Mobile Entertainment's Guide to Android," May 2010 (available at http://www.androidtapp.com/android-growth-statistics-projections/) (presenting projections and assumptions on sales and penetration of Android devices).

Some of the evidence of these facts, as well as evidence of other relevant factors about which

Oracle does not yet know, is uniquely within Google's and others' possession. Google has made

public statements regarding some of these facts, including for example the success of distribution

of Android, Google's expectation of revenue therefrom, and the profitability thereof.[2]

The factual basis for a claim for recovery of Google's profits attributable to the

infringement also includes, for example: (1) Google's business model for realization of revenue

from Android, including, at a minimum, revenue and gross profits from the sale or licensing of

Android-compatible applications,[3] developer access to Google resources or accounts,[4] and

Google mobile search, location services, advertising, and other services[5] (in addition to other

Android-related revenue and profit streams obtained by third-party application developers, device

manufacturers and others); (2) Google's strategic goal of ensuring that it is not dependent on third

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[2] For example:

- Google CEO Eric Schmidt was recently reported to note that "Google is positioning itself to earn $10 billion or more per year in the mobile device business, thanks to its Android operating system," *see Wall Street Journal*, July 28, 2010 (available at http://blogs.wsj.com/digits/2010/07/28/eric-schmidt-on-google%E2%80%99s-next-tricks/);

- Google's Andy Rubin recently stated that activation of Android devices has reached 300,000 per day, *see Wall Street Journal*, December 9, 2010 (available at http://blogs.wsj.com/digits/2010/12/09/google-more-than-300000-android-phones-activated-each-day/);

- It was reported in December 2010 that "Google executives said the company was on track to generate $1 billion annually in mobile-related revenue," *see Wall Street Journal*, "Google to Release new 'Nexus' Phone," December 7, 2010 (available at http://online.wsj.com/article/SB10001424052748704156304576003454213544140.html);

- Google's CEO Eric Schmidt has been reported as stating that "Android-based phones already generate enough new advertising revenue to cover the cost of the software's development"; *Newsweek*, "Android Invasion," October 3, 2010 , at 3 (available at http://www newsweek.com/2010/10/03/how-android-is-transforming-mobile-computing.html)

- Mr. Schmidt has also been reported as stating: "Trust me that revenue is large enough to pay for all of the Android activities and a whole bunch more." *International Business Times,,* "Does Google Have an Android Revenue-Model?," August 10, 2010 (available at http://www fool.com/investing/general/2010/08/10/does-google-have-an-android-revenue-model.aspx).

[3] *See, e.g.*, *Mobile Entertainment*, "Mobile Entertainment's Guide to Android," May 2010 (available at http://www.androidtapp.com/android-growth-statistics-projections/) (presenting projections and assumptions on growth and average pricing of, and revenue from, Android applications).

[4] *See, e.g.,* Pocketnow.com*, "*How Does Google Make Money with Android?," October 3, 2010 (available at http://pocketnow.com/android/how-does-google-make-money-with-android).

[5] *See, e.g., Wall Street Journal*, "Google Executive Says Local Advertising Is Top Focus," December 7, 2010 (available at http://blogs.wsj.com/digits/2010/12/07/google-executive-says-local-advertising-is-top-focus/) (statements regarding success and growth of Google's mobile advertising business).

party (particularly competitor) platforms for success in the mobile environment, including losses

or reductions in revenue Google did and does not incur because it was able to avoid certain

challenges to its core businesses;[6] and (3) the costs Google avoided as a consequence of the

infringement, including costs of developing or acquiring non-infringing alternatives (to the extent

they existed or exist), either within or outside the Java context, that would have enabled Google

to achieve its revenue and strategic objectives. Some of the evidence of these facts, as well as

evidence of other relevant factors about which Oracle does not yet know, is uniquely within

Google's possession.

In addition to the above, the factual basis for a claim for recovery of Oracle's lost profits

(both with respect to diverted or lost revenues and profits and loss of ancillary, convoyed or other

opportunities) includes, for example: (1) Oracle's business model for Java, which is premised in

significant part on preventing or minimizing "forks" in Java and developing and maintaining a

wide base of use by both programmers and end users; (2) loss of Java licensing opportunities,

price or royalty erosion, reduction in market opportunities in markets for Oracle's Java-related

products, and other losses as a direct or indirect consequence of demand for and Google's

distribution of Android; (3) additional costs Oracle has incurred or will incur to undo the damage

caused by the infringement; and (4) harm to Oracle's reputation and goodwill, including any loss

in value to the reputation and brand value of Java. Google itself recognizes the value and

importance of avoiding fragmentation of software platforms, including Android.[7] Oracle's Java

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[6] For example, as Google reported in a recent public filing, "More individuals are using devices other than personal computers to access the internet. If users of these devices do not widely adopt versions of our web search technology, products, or operating systems developed for these devices, our business could be adversely affected." Google Form 10Q for the period ended September 30, 2010, p. 46 (available at
http://investor.google.com/documents/20100930_google_10Q.html).

[7] *See, e.g.*, Ars Tecnica, "Google: carriers should give Android users freedom to unlock bootloader," December 2010 (available at http://arstechnica.com/gadgets/news/2010/12/google-carriers-should-give-android-users-freedom-to-unlock-bootloader.ars) ("Google has very effectively used its exclusive control over the Android Market and Google-branded applications as a means of forcing most of the carriers and handset makers to refrain from fragmenting the platform. . . ."); *Newsweek*, "Android Invasion," October 3, 2010, at 4 (available at
http://www.newsweek.com/2010/10/03/how-android-is-transforming-mobile-computing.html) ("Such fragmentation has been the Achilles' heel of every open-source project. To counter it, Rubin and his team have created a compatibility test suite, a list of things a phone must have in order to carry the Android brand and to run applications like Google Maps.").

technology has generated significant revenue for Sun and Oracle, much of it related to high-margin licensing, application sales, and other revenue opportunities in the mobile environment and elsewhere that have been and continue to be diminished by Google's infringement of Oracle's Java patents and copyrights.

In addition to many of the items described above, the factual basis for Oracle's claim of irreparable harm includes, for example:

- Oracle practices the copyrights and patents in suit in its own Java-related products and authorizes others to practice them through its Java licensing program.

- Google has violated Oracle's exclusive rights to practice and to authorize others to practice the copyrights and patents.

- Google's infringement depresses the market for Oracle's Java-related products and causes Oracle customers to question the value of their Java licenses, damaging the goodwill associated with Oracle's Java products and brand.

- Google's infringement has caused fragmentation, including through the fact that Android runs an unauthorized version of various Java libraries (Apache Harmony), thereby causing confusion among software developers. Particularly in light of Android's popularity, Oracle is irreparably harmed each time a programmer learns and practices Android over Java.

- Google's infringement impedes the growth of a Java applications market that would fuel demand for authorized Java and Java-related products, causing further loss of market share.

The foregoing answer supplements Oracle's initial disclosures pursuant to Fed. R. Civ. Proc. 26(a)(1). When available, additional documents and information will be provided in conformity with Rule 26(a)(2) and/or any relevant Orders entered by the Court. In this regard, and in light of the date specified by the Court for disclosure of affirmative expert reports on damages, Oracle notes that because significant evidence relating to Oracle's damages claims— including, for example, disgorgement of Google's profits from the infringement, Google's expectations as to the value of the infringed intellectual property, and the appropriate amount of

damages corresponding to Google's willful infringement—is in Google's possession, timely

production of information and documents relating to damages by Google will be necessary in

order for Oracle's experts to be able to provide detailed quantifications of Oracle's damages in

their initial reports.

INTERROGATORY NO. 2:

State in detail Oracle's factual bases for its claim of direct copyright infringement,

specifically including a comparison of each element of Java software, including without

limitation any class libraries, API packages, method names, class names, definitions,

organizational elements, parameters, structural elements, and documentation, to the

corresponding Android element, as Oracle did in Exhibit J to its Amended Complaint.

RESPONSE TO INTERROGATORY NO. 2:

Oracle owns many copyrights in the code, documentation, specifications, libraries, and

other materials that comprise the Java platform. As new versions of the Java platform were

developed and the materials revised, the copyrights were registered with the United States

Copyright Office, including TX0004416302; TX0004326014; TX0004616088; TX0005271787;

TX0005316757; TX0005316758; TX0005359984; TX0005359985; TX0005359986;

TX0005359987; TX0005392885; TX0006066538; TX0006143306; and TX0006196514. Google

has infringed Oracle's copyrights.

Android Application Programmer Interface (API) package specifications (whether or not

from the Apache Harmony project) that correspond to Oracle's Java API specifications are

unauthorized derivative work, and Google's unauthorized copying and distribution of them is

copyright infringement. A comparison of Android's API package specifications (available at

http://developer.android.com/reference/packages.html) with Oracle's copyrighted Java API

package specifications (for example, available at

http://download.oracle.com/javase/1.5.0/docs/api/,

http://download.oracle.com/javase/1.4.2/docs/api, and

1   information regarding the nature of the relationship with these and any of the other inventors of

2   the patents-in-suit.

3   Discovery is ongoing, and Oracle has not yet completed its investigation of the documents

4   and facts relevant to the claims and defenses asserted in this action. Accordingly, Oracle's

5   responses are based on the information reasonably available at this time and Oracle will

6   supplement this response as appropriate under the Federal Rules of Civil Procedure.

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     Dated: January 6, 2011   MICHAEL A. JACOBS
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