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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 MAY 24, 2012 COPYRIGHT LIABILITY TRIAL BRIEF

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

1 **I. The exceptions counts in Google’s May 23, 2012 brief**

2 Due to errors in the program used, Google’s May 23, 2012 Brief misstated the number of
3 exceptions thrown by J2SE 5.0 and Android 2.2. As summarized in Exhibit A to this brief, for
4 the 37 packages at issue, the public methods in J2SE 5.0 throw 2,400 exceptions, while the public
5 methods for those packages in Android 2.2 (“Froyo”) throw 2,316 exceptions. For the 37
6 packages at issue, the public methods in the two platforms throw 2,304 exceptions that are the
7 same in the two platforms, while J2SE throws 107 exceptions that are not thrown by Android—
8 84 of which are thrown by methods that are not implemented in Android—and Android throws 12
9 exceptions that are not thrown by J2SE. For most of the packages at issue, the public methods in
10 Android and J2SE throw exactly the same exceptions.¹

11 **II. Oracle’s “compatibility” arguments**

12 Oracle argues in its May 23 brief that the Android and J2SE platforms are not compatible
13 for three reasons, but these reasons are irrelevant to determining whether the SSO of the 37 API
14 packages is copyrightable. Specifically, Oracle argues that Android and J2SE applications are not
15 compatible because Android applications (1) typically use a different “entry point” than J2SE
16 applications, (2) once compiled, are in Dalvik bytecode instead of Java bytecode, and (3) once
17 compiled, typically are stored in “apk” files instead of “jar” files.

18 First, Oracle’s arguments proceed from an erroneous premise—that the “compatibility”
19 analysis should be based on whether the Android platform is compatible *in all respects* with the
20 J2SE platform. That misses the point. The purpose of implementing the Java language APIs in
21 Android is to allow developers writing in the freely-available Java language to use the familiar,
22 established and basic APIs that Java language developers all learn. *See* RT 762:13-23 (Bloch);
23 RT 961:13-962:3 (Swetland); RT 1018:4-23 (Morrill); RT 1769:11-17 (Bornstein).
24 Implementing those APIs in Android allows Java language developers to use the skills and
25 experience they have, and ensures that they can reuse source code that they have written using the
26 APIs in the 37 API packages. RT 2183:2-11 (Astrachan). Without these basic APIs, the Java

27 ¹ These numbers are not identical to the numbers reported by Oracle, which may be due to slight
28 differences in how the exceptions were counted.

1 language is largely useless. RT 683:14-684:4 (Reinhold); RT 782:9-14 (Bloch); RT 1477:2-13
2 (Schmidt); RT 1960:4-8 (Schwartz).

3 The relevant compatibility analysis, therefore, is whether Google’s implementation of the
4 APIs in the 37 packages is compatible with J2SE’s implementation of those APIs from a
5 technical, computer science perspective—and it is. RT 2172:6-11 (Astrachan); RT 2292:25-
6 2293:14 (Mitchell). It is irrelevant whether Android is compatible, in its entirety, with a specific
7 product of Oracle, with Oracle’s licensing or business model, or with definitions of
8 “compatibility” that Oracle has chosen to adopt for self-serving business reasons.²

9 Second, each of Oracle’s arguments also points only to superficial distinctions that ignore
10 that source code that uses the APIs that are common to the two platforms is interoperable with
11 both platforms. With respect to the entry point used, Professor Astrachan explained that while
12 J2SE encloses applications in a method called “main,” Android uses a procedure that is “a little
13 different.” RT 2221:11-2222:3. But Professor Astrachan also explained that, aside from this
14 slightly different startup procedure, “[o]therwise *nothing else would change.*” RT 2221:18
15 (emphasis added).³ The other two points that Oracle raised—the differences in the bytecode used
16 and the differences between the “apk” and “jar” file formats—are relevant only to the *compiled*
17 versions of applications. Neither of the latter two points affects whether *source code* written for
18 the Android platform will function on the J2SE platform or whether source code written for the
19 J2SE platform can be re-used for the Android platform—the salient question for compatibility.

20 Oracle further argues that these three arguments represent only the “tip of the iceberg,” in
21 that J2SE and Android applications are not fully compatible because Google did not implement
22 all 168 of the J2SE 5.0 API packages. But as Google explained in its May 23 brief, even if source

23 ² Oracle implicitly acknowledges in its May 23 brief that its “interoperability” arguments are
24 grounded in its concerns about its “for-charge licensing model” and that it is wedded to the
25 erroneous notion that the only compatibility that matters is the type it prefers, namely that a set of
26 Java APIs is not “compatible” unless it is compatible with “a particular edition of Sun’s Java.”
Dkt. 1191 at 9:4-20.

27 ³ Although Professor Astrachan testified that the launch point for applications in Android is “a
28 little different,” there is nothing in the record that states that Android *cannot* use “main” as an
entry point for an Android application. Indeed, a “command line” Android application *can* use
“main” as its entry point.

1 code written for one platform uses APIs not available on the other platform, the portions of the
2 source code that rely on common APIs will run on both platforms, which means the platforms
3 are, with respect to those APIs, compatible. *See* Dkt. 1192 at 6:5-10. Professor Mitchell
4 conceded that this is useful. RT 2289:21-23; *see also* RT 1787:23-1788:4 (Bornstein).

5 Oracle’s brief illogically assumes that it would for some reason be better for Android to be
6 incompatible in every sense rather than being, as it is, compatible with the APIs in the 37
7 packages.⁴ Jonathan Schwartz—Sun’s CEO at the time that Android was launched—testified to
8 the contrary:

9 Q. And did you actually give interviews in which you said you thought
10 Android was helping Java?

11 A. I did. . . .

12 At least if they picked an Open Source Java implementation, they could be
13 a part of the community. If they had picked something that was completely
14 variant, it would have had no utility to us whatsoever.

15 RT 1992:2-12.

16 Indeed, Oracle has itself benefitted from the compatibility between the J2SE and Android
17 platforms. For example, Oracle admitted that it accepted Google’s contribution of Josh Bloch’s
18 TimSort.java and ComparableTimSort.java source code and incorporated it into Oracle’s
19 OpenJDK 7, which is the current Oracle release of J2SE. RT 1865:11-20 (Oracle’s Resp. to
20 Google’s RFA No. 170); RT 822:10-15 (Bloch); *see also* RT 823:3 (Bloch) (testifying that
21 Dr. Reinhold of Oracle praised the performance of TimSort when J2SE 7 was released). It is
22 undisputed that TimSort is compatible with both the J2SE and Android platforms.

23 **III. *Sony Comp. Entm’t, Inc. v. Connectix Corp.***

24 In *Sony Comp. Entm’t, Inc. v. Connectix Corp.*, the Ninth Circuit held that Connectix’s
25 copying and disassembly of the Sony PlayStation BIOS—the “basic input-output system” that
26 was the software program that operated the Sony PlayStation video game console—was a fair use

27 ⁴ Oracle’s quote from Judge Whyte’s decision in *Sun v. Microsoft* is inapposite. “Write once, run
28 anywhere was never a promise that if you wrote code for one Java platform that it would
automatically/magically work on another.” RT 725:10-12 (Reinhold). Unlike Microsoft, Google
has never claimed that Android is an implementation of J2SE. Android is a different platform
than J2SE.

1 because Connectix's purpose in doing so was "for the purpose of gaining access to the
2 unprotected elements of Sony's software." 203 F.3d 596, 598, 602 (9th Cir. 2000).

3 The Ninth Circuit's opinion does not discuss in any detail precisely what the unprotected
4 elements were; instead, the opinion refers to the "functional" and unprotected elements of the
5 Sony software, without identifying specifically what they are. *See, e.g., id.* at 603 ("There is no
6 question that the Sony BIOS contains unprotected functional elements."), 605 ("If Sony wishes to
7 obtain a lawful monopoly on the functional concepts in its software, it must satisfy the more
8 stringent standards of the patent laws.").

9 In its opening Ninth Circuit appellate brief, however, Connectix explained that its Virtual
10 Game Station software ("VGS") emulated both the Sony PlayStation hardware, and the Sony
11 PlayStation BIOS software. In developing VGS, Connectix first emulated the PlayStation's
12 microprocessor in software. Ex. B (Connectix Br.) at 11.⁵ Connectix also studied the
13 "interaction between Sony's BIOS and the hardware" and then "wrote software to emulate the
14 hardware functionality." *Id.* at 11-12. The Connectix code that emulated the Sony PlayStation
15 hardware dwarfed the Connectix code that it subsequently wrote that emulated Sony's BIOS, *see*
16 *id.* at 31 n.8, much as the Android source code that implements the 37 API packages is dwarfed
17 by the rest of the Android source code.

18 After Connectix had written its hardware emulation code, it "reverse engineered Sony's
19 BIOS by running PlayStation games in conjunction with the BIOS and its software emulator of
20 the hardware." *Id.* at 12. This was necessary because "[o]perations systems, system interface
21 procedures, and other programs like the Sony BIOS are not visible to the user when they are
22 operating." *Sony*, 203 F.3d at 600. Connectix then "proceeded to write code to emulate the
23 necessary BIOS functionality." Ex. B at 13. This final step was therefore analogous to the
24 process by which Google wrote its own code implementing the 37 API packages. Connectix
25 "began with an empty table consistent of the entry points into the BIOS." *Id.* In order to ensure
26 that the VGS was compatible with PlayStation games, this table had to "contain the same entry

27 _____
28 ⁵ Google previously filed a copy of Connectix's opening appellate brief as Exhibit GG to the
Reply Declaration of Michael S. Kwun that was filed on August 29, 2011. *See* Dkt. 369-3.

1 points, and be in the same order and format, as the table in Sony’s BIOS.” *Id.*

2 It appears that when the software code in PlayStation games invoked the Sony BIOS, this
3 process included the name of the BIOS function that was being accessed. *See id.* at 13-14
4 (“Connectix engineers could typically deduce the requisite BIOS functionality by examining the
5 function name, the information sent to and from the BIOS, or the general grouping of functions
6 requested by PlayStation games.”). Through a variety of means, Connectix determined the
7 purpose, parameters and return formats for 137 of the 242 functions implemented in the Sony
8 BIOS,⁶ and then “independently wrote code to implement the required functionality.” *Id.* at 13-
9 15 & n.3. A minority of these functions (“a third to a half”) were standard C programming
10 language functions, *id.* at 13, while the rest were not. In sum, Connectix’s VGS implemented the
11 Sony PlayStation BIOS interfaces. *See* JONATHAN BAND & MASANOBU KATO, INTERFACES ON
12 TRIAL 2.0 at 61 (MIT Press 2011) (in *Sony*, the Ninth Circuit found that intermediate copies were
13 fair use where “they were necessary for the uncovering of elements not protected by Sony’s
14 copyright—specifically, the BIOS’s interface specifications.”).

15 Again, this process was analogous to the process by which Google implemented the 37
16 API packages. Google, like Connectix, implemented some but not all of the functions from the
17 plaintiff’s software system, choosing only those functions necessary to accomplish its purpose.
18 For those functions, Google, like Connectix, ensured that it duplicated the same “entry points”
19 and each function’s functionality, including the information sent to and from the system. Many
20 of the Sony functions, like many of the J2SE functions, performed standard functions familiar to
21 any programmer. Google, like Connectix, wrote its own implementing code. Indeed, the key
22 distinction between the present case and *Sony*, is that Connectix created intermediate copies of
23 Sony’s *implementing code*, for which it had to rely on fair use. Google did not copy Oracle’s
24 implementing code, and thus section 102(b) itself precludes copyright infringement liability.

25
26 ⁶ Connectix implemented only 137 of the 242 functions because those were the only functions
27 invoked by the games that Connectix tested. *Id.* at 18. This parallels Google’s decision to
28 implement some but not all of the J2SE 5.0 API packages, and most but not all of the JS2E 5.0
exceptions. Moreover, this means that VGS likely was not “fully compatible” with the Sony
PlayStation—and that full compatibility is not relevant to the section 102(b) analysis.

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Dated: May 24, 2012

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