

1 MORRISON & FOERSTER LLP
 MICHAEL A. JACOBS (Bar No. 111664)
 2 mjacobs@mofo.com
 MARC DAVID PETERS (Bar No. 211725)
 3 mdpeters@mofo.com
 DANIEL P. MUINO (Bar No. 209624)
 4 dmuino@mofo.com
 755 Page Mill Road
 5 Palo Alto, CA 94304-1018
 Telephone: (650) 813-5600 / Facsimile: (650) 494-0792

6 BOIES, SCHILLER & FLEXNER LLP
 7 DAVID BOIES (Admitted *Pro Hac Vice*)
 dboies@bsfllp.com
 8 333 Main Street
 Armonk, NY 10504
 9 Telephone: (914) 749-8200 / Facsimile: (914) 749-8300
 STEVEN C. HOLTZMAN (Bar No. 144177)
 10 sholtzman@bsfllp.com
 1999 Harrison St., Suite 900
 11 Oakland, CA 94612
 Telephone: (510) 874-1000 / Facsimile: (510) 874-1460

12 ORACLE CORPORATION
 13 DORIAN DALEY (Bar No. 129049)
 dorian.daley@oracle.com
 14 DEBORAH K. MILLER (Bar No. 95527)
 deborah.miller@oracle.com
 15 MATTHEW M. SARBORARIA (Bar No. 211600)
 matthew.sarboraria@oracle.com
 16 500 Oracle Parkway
 Redwood City, CA 94065
 17 Telephone: (650) 506-5200 / Facsimile: (650) 506-7114

18 *Attorneys for Plaintiff*
 ORACLE AMERICA, INC.

20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA
 22 SAN FRANCISCO DIVISION

23 ORACLE AMERICA, INC.

24 Plaintiff,

25 v.

26 GOOGLE INC.

27 Defendant.

Case No. CV 10-03561 WHA

**ORACLE'S RESPONSE TO
 TENTATIVE CLAIM
 CONSTRUCTION ORDER AND
 REQUEST FOR CRITIQUE**

Dept.: Courtroom 9, 19th Floor
 Judge: Honorable William H. Alsup

1 Pursuant to the Court’s April 28, 2011 Tentative Claim Construction Order and Request
2 for Critique, Oracle responds to the Court’s tentative claim constructions.

3 **I. INTRINSIC EVIDENCE SUPPORTS THE COURT’S TENTATIVE**
4 **CONSTRUCTIONS FOR MOST TERMS**

5 Oracle submits that the intrinsic evidence supports the Court’s tentative claim
6 constructions for:

7 **“reduced class file”**: *e.g.*, '702, Claim 1 (“removing said duplicated elements from said
8 plurality of class files to obtain a plurality of reduced class files”);

9 **“the play executing step”**: *e.g.*, '520, 2:66 (“simulates executing (‘play executes’)”);

10 **“intermediate form code” and “intermediate form object code”**: *e.g.*, '104, 2:27-29
11 (“A method and apparatus for generating executable code and resolving data
12 references in the generated code is disclosed.”); and

13 **“resolve” and “resolving”**: '104, 2:44-47 (“resolves a symbolic reference and rewrites
14 the symbolic reference into a numeric reference”).

15 Oracle agrees that “computer readable media” and variants of the phrase require
16 individualized attention to the intrinsic evidence and prosecution history of each patent from
17 which they hail. *See* Tentative Claim-Construction Order at 24 (Dkt. 128).

18 **II. “DYNAMIC RESOLUTION” IS NOT INHERENT IN “SYMBOLIC**
19 **REFERENCE”**

20 The Court’s tentative construction of “symbolic reference” is “a reference that identifies
21 data by a name other than the numeric memory location of the data, and that is resolved
22 dynamically rather than statically.” The first portion follows directly from the intrinsic evidence.
23 The Court identified the portion of the '104 specification that distinguished between symbolic
24 (name-based) references and numeric (location-based) references: “Instead, a symbolic reference
25 identified data by a ‘symbolic name’ (col. 1:64-67).” Tentative Claim-Construction Order at 21
(Dkt. 128.)

26 Oracle submits that the requirement that a “symbolic reference” also be “resolved
27 dynamically rather than statically” is not supported by the intrinsic evidence. Symbolic
28 references need not be resolved dynamically. The '104 patent discloses that in a compiled

1 programming language, “[r]eferences to data in the generated code are resolved prior to execution
2 based on the layout of the data objects that the program deals with, thereby, allowing the
3 executable code to reference data by their locations.” ’104, 1:29-32. Disclosed examples of data
4 references are x, y, and name, which the compiler resolves to location-based references. ’104,
5 1:37-40 (“Thus, an instruction that accesses or fetches y, such as the Load instruction 14
6 illustrated in FIG. 1, is resolved to reference the variable y by the assigned slot 2 . . .”), 1:51-54
7 (“[I]f the point data object had a new field added at the beginning called name, which contains the
8 name of the point, then the variables x and y could be reassigned to slots 2 and 3.”). The only
9 constraint the ’104 claims and specification impose on “symbolic reference” (beyond the ordinary
10 meaning of the term in the art) is that it be resolved into a numeric reference. *See* ’104 Abstract;
11 2:38-51; 5:10-17 & Fig. 7; 5:32-41 & Fig. 8; 5:59-6:14; 6:31-62; Claims 11-41.

12 The ’104 specification thus discloses that it is not inherent in “symbolic reference” that a
13 symbolic reference is resolved dynamically rather than statically. The addition of “resolved
14 dynamically rather than statically” to the construction serves to import a word that is used to
15 describe an exemplary routine that performs the resolution of symbolic references (the “dynamic
16 field reference routine”) but is not itself part of the meaning of “symbolic reference.” *See, e.g.,*
17 ’104, Claim 24 (“when it is determined that the bytecode of the program contains a symbolic data
18 reference, invoking a dynamic field reference routine to resolve the symbolic data reference”).

19 Oracle remains concerned that the meaning of “dynamic” in the context of the ’104 patent
20 has not been fleshed out and may lead to a “construction of the construction” problem. As
21 Google’s dictionary indicates, “dynamic” is a word with many nuanced meanings that depend on
22 its use in context. *See* Supplemental Declaration of Truman Fenton, Ex. P (Dkt. 103).

23 Oracle further suggests that deciding upon any particular gloss on “symbolic reference” is
24 better done in the context of the infringement or validity issues, rather than in the abstract.
25 Google’s programmers wrote that Android “converts symbolic references into pointers,” using
26 the same language that the patent does. If Google aims to slip the noose of its own creation by
27 arguing that its “symbolic reference” is not the patent’s “symbolic reference,” it is better for the
28 Court to have an understanding of the impact that the inclusion of “resolved dynamically rather

1 than statically” may have on Google’s noninfringement arguments when the Court makes its
2 claim construction decision.

3 **III. CONCLUSION**

4 The Court should adopt its tentative claim constructions for “reduced class file”; “the play
5 executing step”; “intermediate form code” and “intermediate form object code”; and “resolve”
6 and “resolving.” Oracle requests that the Court remove “and that is resolved dynamically rather
7 than statically” from its tentative construction of “symbolic reference.”

8
9 Respectfully submitted,

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11 MICHAEL A. JACOBS
12 MARC DAVID PETERS
13 DANIEL P. MUINO
14 MORRISON & FOERSTER LLP

15 By: /s/ Marc David Peters

16 *Attorneys for Plaintiff*
17 ORACLE AMERICA, INC.
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