

# **EXHIBIT 35**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE WILLIAM ALSUP

ORACLE AMERICA, INC.,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. C 10-03561 WHA
	)	
GOGGLE, INC.,	)	
	)	SAN FRANCISCO, CALIFORNIA
DEFENDANT.	)	WEDNESDAY
	)	FEBRUARY 9, 2011
	)	11:00 O'CLOCK A.M.

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**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:**                   **MORRISON & FOERSTER LLP**  
755 PAGE MILL ROAD  
PALO ALTO, CALIFORNIA 94304-1018  
**BY: RICHARD S. BALLINGER, ESQUIRE**  
**ROMAN A. SWOOPES, ESQUIRE**  
**MARC DAVID PETERS, PH.D., PARTNER**  
**MICHAEL A. JACOBS, PARTNER**  
**DIANE C. GABL, ATTORNEY AT LAW**  
**650-251-3974**

AND

**ANDREW C. TEMKIN, CORPORATE COUNSEL**  
500 ORACLE PARKWAY  
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FURTHER APPEARANCES ON NEXT PAGE.

***REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR***  
***OFFICIAL REPORTER - US DISTRICT COURT***  
***COMPUTERIZED TRANSCRIPTION BY ECLIPSE***

1 YOU GETTING US IN THE ROOM TOGETHER WAS PRODUCTIVE.

2 **THE COURT:** WELL, THEN, LET'S HEAR THE AGREEMENT.

3 **MR. JACOBS:** THE AGREEMENT IS THAT BY FEBRUARY 18TH  
4 BOTH SIDES WILL FURTHER SUPPLEMENT THEIR INFRINGEMENT  
5 CONTENTIONS AND NONINFRINGEMENT CONTENTIONS WITH RESPECT TO THE  
6 CONCERN THE OTHER SIDE RAISED.

7 TO GO DOWN A LEVEL OF DETAIL, WE HAVE EXPRESSED A  
8 CONCERN WITH THE LEVEL OF TECHNICAL DETAIL IN GOGGLE'S  
9 NONINFRINGEMENT CONTENTIONS. WHY IS THIS LIMITATION NOT PRESENT  
10 IN THE SOURCE CODE WHERE IN THE INFRINGEMENT CONTENTIONS WE'VE  
11 DELINEATED THE SOURCE CODE WHERE THAT LIMITATION CAN BE FOUND?

12 GOGGLE HAS AGREED TO GIVE IT THEIR BEST CURRENT SHOT  
13 AT ARTICULATING WHY THAT LIMITATION IS NOT PRESENT IN THAT CODE  
14 ITSELF, ON THE ASSUMPTION THAT THAT CODE IS OPERATING ON THE  
15 HANDSETS.

16 RECIPROCALLY GOOGLE EXPRESSED A CONCERN THAT WE HAD  
17 NOT ARTICULATED SUFFICIENTLY THE BASIS FOR OUR BELIEF THAT THE  
18 GOOGLE -- THAT THE ANDROID CODE THAT IS ON THE GOOGLE PUBLIC  
19 ANDROID WEBSITE IS, IN FACT, THE CODE THAT IS PRESENT ON THE  
20 HANDSETS THAT WOULD REPRESENT THE DIRECT INFRINGEMENT IN CASES  
21 OF INDIRECT INFRINGEMENT.

22 SO BY FEBRUARY 18TH, WE WILL BOTH BE SUPPLEMENTING  
23 AND GIVING IT OUR BEST CURRENT SHOT WITH RESPECT TO THE OTHER  
24 SIDE'S CONCERNS.

25 WE FURTHER AGREED THAT WE WILL DO ANOTHER UPDATE OF

1 OUR CONTENTIONS AMPLIFYING ON EVIDENCE THAT HAS BEEN DEVELOPED  
2 IN THE INTERIM ON APRIL 1ST.

3 SO I THINK WE'RE BOTH SATISFIED THAT WE'VE MADE A LOT  
4 OF PROGRESS HERE, AT LEAST, AND DON'T NEED THE COURT'S  
5 INTERVENTION AT THIS TIME ON THAT, ON THE ISSUE OF OUR  
6 INFRINGEMENT CONTENTIONS AND THEIR NONINFRINGEMENT CONTENTIONS.

7 **THE COURT:** SO PROPERLY STATED?

8 **MR. WEINGAERTNER:** YES, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. WELL, GOOD. THANK YOU FOR  
10 MAKING THAT AGREEMENT. I APPRECIATE IT.

11 IS THERE ANYTHING MORE I CAN DO FOR YOU TODAY?

12 **MR. JACOBS:** WE HAD FURTHER BRIEFED CONCERNS WITH  
13 EACH OTHER'S INTERROGATORY RESPONSES. WE HAD ENOUGH TIME TO  
14 DISCUSS TWO OF THOSE, ONE IMPORTANT ONE, ONE THAT WAS IMPORTANT  
15 TO EACH SIDE. AND WE MADE ENOUGH PROGRESS IN RESOLVING THOSE  
16 THAT WE DON'T THINK WE NEED THE COURT'S INTERVENTION ON  
17 INTERROGATORIES AT THIS TIME.

18 WE BOTH AGREED THAT WHAT WE REALLY NEED TO BE DOING  
19 IS ENGAGING BETTER WITH EACH OTHER IN ATTEMPTING TO RESOLVE  
20 THESE DISAGREEMENTS AND EXPLAINING WHAT IS REALLY BOTHERING THE  
21 OTHER SIDE AND NOT ASKING THE COURT TO CALL THESE BALLS AND  
22 STRIKES AT THIS POINT.

23 **THE COURT:** AGREED?

24 **MR. WEINGAERTNER:** YES, YOUR HONOR. WE'RE IN  
25 AGREEMENT WITH THAT.

## 1 CERTIFICATE OF REPORTER

2 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY  
3 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED  
4 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO  
5 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE  
6 RECORD OF SAID PROCEEDINGS.

7 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR  
8 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING  
9 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE  
10 OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

11 THE FEE CHARGED AND THE PAGE FORMAT FOR THE  
12 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL  
13 CONFERENCE.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS  
15 10TH DAY OF FEBRUARY, 2011.

16  
17  
18  
19 \_\_\_\_\_  
20 /S/ KATHERINE WYATT  
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23  
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