

EXHIBIT 4-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
-----)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Federal Rule 30(b)(6) Deposition
of PETER B. KESSLER, Ph.D., taken at 755 Page
Mill Road, Palo Alto, California, commencing
at 9:39 a.m., Thursday, August 4, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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1 position is that the JDK does practice the '205.

2 Q. BY MR. KAMBER: What is the basis for that
3 belief?

4 MS. AGRAWAL: Same objection.

5 THE WITNESS: Communication with the 11:03:02
6 attorneys.

7 Q. BY MR. KAMBER: Do you have any other basis
8 for the belief that JDK 1.2 practices the asserted claims
9 of the '205 patent?

10 MS. AGRAWAL: Same objections. 11:03:18

11 THE WITNESS: My understanding of the '205
12 comes from my communications with the attorneys. And
13 using that information, I can look in the source code.

14 Q. BY MR. KAMBER: I'm not sure I understand
15 that answer, Dr. Kessler. 11:03:39

16 My question is: Do you have any other basis
17 besides conversations with counsel to believe that JDK
18 1.2 practices the asserted claims of the '205 patent?

19 MS. AGRAWAL: Same objections.

20 THE WITNESS: In addition to information that 11:03:55
21 I've obtained from the attorneys, I have my reading of
22 the code.

23 Q. BY MR. KAMBER: Which code?

24 MS. AGRAWAL: Same objections.

25 THE WITNESS: In the case of the '205, I 11:04:11

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1 would think it was the fast_invokevfinal.

2 Q. BY MR. KAMBER: Are there any other -- is
3 there any other code that you're aware of besides
4 fast_invokevfinal that Oracle claims practices the '205
5 patent?

11:04:46

6 MS. AGRAWAL: Same objections.

7 THE WITNESS: There may well be other
8 examples of my attorneys' interpretation of the '205 in
9 the source code, but the one that I know about is in
10 fast_invokevfinal.

11:05:07

11 Q. BY MR. KAMBER: Okay. And you -- by "you"
12 you're speaking on behalf of Oracle here today; correct?

13 A. Yes.

14 Q. So the only source code that Oracle is taking
15 a position on with respect to whether it practices the
16 '205 patent is the fast_invokevfinal method; correct?

11:05:23

17 MS. AGRAWAL: Same objection.

18 MR. KAMBER: Excuse me. Fast_invokevfinal.

19 THE WITNESS: V final.

20 MS. AGRAWAL: Same objections.

11:05:37

21 THE WITNESS: That's certainly one of the --
22 so I don't want to limit myself to fast_invokevfinal if
23 there are other instances.

24 Q. BY MR. KAMBER: Okay. But I'm trying to
25 understand. We're -- I'm here on behalf of my client to

11:05:55

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1 Q. BY MR. KAMBER: Is it fair to say that Oracle
2 can't identify an earlier date of conception for the
3 invention allegedly set forth in the asserted claims of
4 the '104 patent?

5 MS. AGRAWAL: Objection. Form. 16:45:55

6 THE WITNESS: I do not know of an earlier
7 date of conception for the '104.

8 Q. BY MR. KAMBER: Same questions with respect
9 to reduction to practice. Is Oracle able to identify any
10 date prior to the date of the patent, the filing of the 16:46:16
11 patent, I should say, at which the inventions allegedly
12 set forth in the asserted claims of the '104 patent were
13 reduced to practice?

14 MS. AGRAWAL: Objection. Form.

15 THE WITNESS: I do not know of any such 16:46:32
16 information.

17 Q. BY MR. KAMBER: Which products implement the
18 alleged invention of the '104 patent?

19 MS. AGRAWAL: Objection. Form.

20 THE WITNESS: There's a list of them on 16:47:05
21 page 9 of Exhibit 329.

22 Q. BY MR. KAMBER: Is the list on page 9 of
23 Exhibit 329 a complete list of the instrumentalities of
24 Oracle that practice the asserted claims of the '104
25 reissue patent? 16:47:30

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1 A. To my knowledge, it is.

2 Q. What is the basis of that knowledge?

3 MS. AGRAWAL: Caution the witness not to
4 reveal attorney-client communications, but to the extent
5 that you don't, go ahead and answer. 16:47:46

6 THE WITNESS: For some of them, it's my
7 examination of the source code; for others, it's
8 conversations with other engineers.

9 Q. BY MR. KAMBER: Okay. With respect to -- let
10 me ask: For which products did you do an evaluation of 16:48:06
11 the source code for whether it practices the asserted
12 claims of the '104 reissue patent?

13 MS. AGRAWAL: Objection. Form.

14 THE WITNESS: So the JDK is built on top of
15 the JRE. I examined the source code for the JRE. I 16:48:37
16 examined the source code for HotSpot. And for the
17 others, I relied upon the opinions of other engineers who
18 were more familiar with those source code bases.

19 Q. BY MR. KAMBER: Which engineers did you speak
20 to in order to determine whether the instrumentalities 16:48:55
21 listed on page 9 of Exhibit 329 practiced the asserted
22 claims of the '104 patent?

23 MS. AGRAWAL: Objection. Form.

24 THE WITNESS: There are several different
25 products listed here that have different engineers. I 16:49:21

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1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

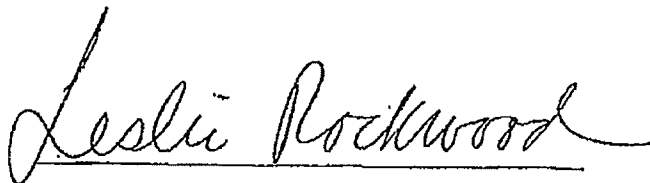
3
4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all
10 objections made by counsel at the time of the examination
11 were recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel
17 for any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested in
19 the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 5th day of August, 2011.

22
23 
24

25 LESLIE ROCKWOOD, CSR. NO. 3462