

1 [Counsel listed on signature pages]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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ORACLE AMERICA, INC.

Case No. CV 10-03561 WHA

12

Plaintiff,

**JOINT CASE MANAGEMENT
STATEMENT**

13

v.

Date: November 18, 2010

14

GOOGLE INC.

Time: 11:00 a.m.

15

Defendant.

Dept.: Courtroom 9, 19th Floor

Judge: Honorable William H. Alsup

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Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-10, Patent Local Rule 2-1, the Standing Order for All Judges of the Northern District of California for Contents of Joint Case Management Statement, the Court’s Notice Scheduling Initial Case Management Conference or Reassignment (Docket No. 25), and the Court’s Tentative Case Management Order (Docket No. 50), Plaintiff Oracle America, Inc. (“Oracle America”) and Defendant Google, Inc. (“Google”) submit this Joint Case Management Conference Statement.

23

1. Jurisdiction and Service:

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The Court has jurisdiction over the patent and copyright claims and counterclaims under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §1338(a) (actions asserting claims of patent and copyright infringement).

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1 Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Google
2 conducts business within this judicial district. Oracle America is also based in this district. No
3 issues exist regarding jurisdiction and venue. No parties remain to be served.

4 **2. Facts:**

5 Oracle America, Inc. (“Oracle America”) is a corporation organized under the laws of the
6 State of Delaware with its principal place of business at 500 Oracle Parkway, Redwood City,
7 California 94065. Oracle America does business in the Northern District of California.

8 Google, Inc. (“Google”) is a corporation organized under the laws of the State of
9 Delaware with a principal place of business at 1600 Amphitheatre Parkway, Mountain View,
10 California 94043.

11 Oracle America filed a complaint on August 12, 2010, alleging that components of
12 Google’s Android platform infringe United States Patents Nos. 6,125,447; 6,192,476; 5,966,702;
13 7,426,720; RE38,104; 6,910,205; and 6,061,520 (collectively, the “Patents-in-Suit”) and two of
14 Oracle America’s Java-related copyrights (the “Asserted Copyrights”). The Complaint contained
15 seven causes of action for direct and indirect patent infringement and one cause of action for
16 direct and indirect copyright infringement.

17 On October 4, 2010, Google filed an answer and counterclaims seeking declaratory
18 judgments of non-infringement and invalidity of the asserted patents. Google also filed a motion
19 to dismiss Oracle’s copyright claim, or for a more definite statement.

20 On October 26, 2010 Oracle filed a motion to dismiss certain of Google’s counterclaims
21 and to strike certain defenses and paragraphs from Google’s counterclaims.

22 Oracle America filed an Amended Complaint on October 27, 2010, and an opposition to
23 Google’s motion to dismiss requesting the Court dismiss Google’s motion to dismiss as moot.

24 On October 28, 2010, the Court issued an Order to Show Cause as to why Google’s motion to
25 dismiss should not be denied as moot. On November 1, 2010, Google responded to the Order to
26 Show Cause, agreeing with the denial under the circumstances. The same day, the Court denied
27 Google’s motion as moot.

1 On November 10, Google filed an Amended Answer and Counterclaims reiterating its
2 request for declaratory judgments of invalidity and non-infringement of the asserted patents and
3 requesting a declaratory judgment of non-infringement of the asserted copyrights. On November
4 10, Google also filed its brief in opposition to Oracle America’s motion to dismiss and to strike.

5 The principal disputed factual issues concern the bases for: patent and copyright
6 infringement, patent and copyright invalidity, patent and copyright unenforceability, damages,
7 and other claims, defenses, and counterclaims raised in the pleadings.

8 **3. Legal Issues:**

9 The principal disputed legal issues are:

- 10 • The proper claim construction for the Patents-In-Suit;
- 11 • Whether Google infringed and continues to infringe—literally, contributorily, or by
12 active inducement—one or more of the Patents-In-Suit;
- 13 • Whether the Patents-In-Suit are valid and enforceable;
- 14 • Whether the Asserted Copyrights are valid and enforceable;
- 15 • Whether Google infringes, directly or indirectly, the Asserted Copyrights;
- 16 • Whether any accused use of Oracle America’s patent rights and copyrights is subject
17 to a license;
- 18 • Whether Oracle America’s claims are barred, in whole or in part, by the various
19 equitable and legal defenses raised by Google;
- 20 • Whether Oracle America is entitled to compensation for any proven patent or
21 copyright infringement, pursuant to 35 U.S.C. § 284, and if so, the amount;
- 22 • Whether Google is entitled to a declaratory judgment that any of the Patents-In-Suit
23 are invalid;
- 24 • Whether Google is entitled to a declaratory judgment that Google does not infringe
25 any valid and enforceable asserted patent or copyright; and
- 26 • Whether the case is “exceptional” within the meaning of 35 U.S.C. § 285, entitling the
27 prevailing party to reasonable attorneys’ fees.

1 **4. Motions:**

2 The parties have filed the following motions:

- 3 • **Google’s Motion to Dismiss.** On October 4, 2010, Google filed a Motion to Dismiss
4 Oracle America’s Complaint or, in The Alternative, For a More Definite Statement.
5 (Docket No. 33.) Because Oracle America subsequently filed an amended complaint,
6 the Court denied Google’s motion as moot. (Docket No. 45.)
- 7 • **Oracle America’s pending Motion to Dismiss and Strike.** On October 26, 2010,
8 Oracle America filed a Motion to Dismiss Google’s invalidity counterclaims and
9 strike certain affirmative defenses and impertinent matter. (Docket No. 35.) On
10 November 10, Google filed its response to Oracle America’s motion.

11 The parties anticipate the following motions:

- 12 • **Motions to Dismiss.** The parties may file motions to dismiss portions of the amended
13 pleadings.
- 14 • **Motions for Summary Judgment.** Both parties expect to move for summary
15 judgment addressed to some or all of the claims and defenses in this action.

16 **5. Amendment of Pleadings:**

17 The parties presently do not anticipate that any parties will be joined. The parties
18 anticipate that, to the extent motions to dismiss or other motions challenging the sufficiency of
19 the pleadings under Federal Rule of Civil Procedure 12 are filed, the parties may amend their
20 pleadings in response in accordance with Federal Rule of Civil Procedure 15(a)(1)(B).

21 **6. Evidence Preservation:**

22 Each party represents that it has instituted reasonable document retention procedures so as
23 to maintain any relevant documents, electronic or otherwise, or any other relevant electronically
24 recorded material, until this dispute is resolved.

25 **7. Disclosures:**

26 By agreement, the parties will have exchanged initial disclosures in accordance with
27 Federal Rule of Civil Procedure 26 and agreement of the parties on or before December 2, 2010,
28 following the initial case management conference.

1 **8. Discovery:**

2 The parties propose following the limitations and guidelines on discovery under the
3 Federal Rules of Civil Procedure, the local rules, and this Court’s Supplemental Order To Order
4 Setting Initial Case Management Conference In Civil Case.

5 The parties have not served discovery requests and have agreed to refrain from initiating
6 discovery until December 2, 2010, following the initial case management conference.

7 The parties anticipate that the scope of discovery will encompass the factual and legal
8 issues identified in Sections 2 and 3 above, and the requested relief discussed in Section 11
9 below, including all related, ancillary, and subsidiary factual and legal issues and matters. The
10 parties propose the following limitations for discovery:

11 **A. Interrogatories**

12 Each party may propound 50 interrogatories. Interrogatories reasonably directed to all of
13 the Patents-In-Suit shall be counted as single interrogatories, rather than seven. Interrogatories
14 may be directed at individual patents, however, and need not be directed to all seven.

15 **B. Request for Admission**

16 The parties propose that no limits should be placed on the number of requests for
17 admission that either party may propound.

18 **C. Requests for Production of Documents and Things**

19 The parties propose that no limits should be placed on the number of requests for
20 production of documents and things that either party may propound.

21 **D. Depositions**

22 The parties propose that each party may notice 25 depositions, including third-party
23 depositions. This limitation does not apply to Rule 30(b)(6)¹ or expert depositions. Each party
24 may depose each of the other party’s testifying expert witnesses. The parties have agreed that
25 depositions will be taken by agreement and on agreed-upon dates if possible. The parties will

26 _____
27 ¹ The parties jointly request that the limit on Rule 30(b)(6) deposition topics be increased
28 to 15 for the reasons discussed in Paragraph 20 below.

1 attempt to agree on the same court reporter/videographer in order to streamline exhibit numbering
2 and deposition scheduling. The parties will produce foreign witnesses in their control for
3 deposition at an agreed-upon location in this district to the extent possible.

4 **E. Electronically Stored Information (“ESI”)**

5 The parties discussed electronic discovery during the Rule 26(f) conference and are in the
6 process of negotiating an ESI agreement. The parties will continue to meet and confer on
7 reaching a prompt agreement delineating the procedures to be used in producing electronic
8 discovery. The parties propose a deadline of December 17, 2010 for finalizing an ESI agreement.

9 **F. Attorney—Client Privilege and Work Product Doctrine**

10 The parties discussed requesting a blanket protective order during the Rule 26(f)
11 conference and are in the process of negotiating the terms of a stipulated protective order based
12 on the Northern District of California’s model. The parties propose a deadline of December 10,
13 2010 for filing a stipulated blanket protective order. The parties have agreed that the parties need
14 not include communications with litigation counsel or expert witnesses on their privilege logs to
15 preserve their privileges or protections.

16 **G. Expert Communications and Drafts**

17 The parties have agreed that neither party need produce communications between counsel
18 and expert witnesses or drafts of expert reports. Counsel’s communications with experts shall be
19 deemed to be protected as work product unless the expert relies on any such communication to
20 support his or her opinion.

21 **9. Class Actions:**

22 This is not a class action.

23 **10. Related Cases:**

24 There are no related cases.

25 **11. Relief:**

26 Oracle America seeks the following relief:

- 27
 - Judgment that each of the accused products, methods, and systems infringes the
28 Patent-In-Suit.

- 1 • Judgment that Google’s Android infringes Oracle America’s copyrights.
- 2 • An order enjoining Google from continued acts of infringement of the Patents-In-
- 3 Suit and Asserted Copyrights.
- 4 • An order that infringing copies be impounded, destroyed, or otherwise reasonably
- 5 disposed of.
- 6 • Damages resulting from Google’s acts of infringement, in an amount to be proven
- 7 at trial. Oracle America will further describe the amounts of damages sought and
- 8 the bases on which damages are calculated in its Rule 26(a) disclosures.
- 9 • Statutory damages.
- 10 • Enhanced damages in view of Google’s willful and deliberate infringement of the
- 11 patents and copyrights at issue.
- 12 • An order awarding Oracle America its costs and fees under 35 U.S.C. § 285 and
- 13 17 U.S.C. § 505.
- 14 • Judgment that Oracle America is the prevailing party.
- 15 • Judgment against Google on its affirmative defenses.
- 16 • Judgment dismissing Google’s counterclaims with prejudice.
- 17 • Judgment that the case is “exceptional” within the meaning of 35 U.S.C. § 285,
- 18 entitling Oracle America to its reasonable attorney’s fees.
- 19 • Any other relief that the Court finds just and proper.

20 Google seeks the following relief:

- 21 • Judgment that Oracle America’s claims be denied and that Google be awarded its
- 22 costs, including reasonable attorneys’ fees.
- 23 • Judgment dismissing Oracle America’s complaint with prejudice.
- 24 • Judgment in favor of Google on all of its Counterclaims.
- 25 • A declaration that Google has not infringed, contributed to the infringement of, or
- 26 induced others to infringe, either directly or indirectly, any valid and enforceable
- 27 claims of the Patents-in-Suit.
- 28 • A declaration that the Patents-in-Suit are invalid.

- 1 • A declaration that Google has not infringed, either directly or indirectly, any of the
- 2 Asserted Copyrights.
- 3 • A declaration that Oracle’s claims are barred by the doctrines of laches, equitable
- 4 estoppel, and/or waiver.
- 5 • A declaration that this case is exceptional and an award to Google of its reasonable
- 6 costs and expenses of litigation, including attorneys’ fees and expert witness fees.
- 7 • Such other and further relief as this Court may deem just and proper.

8 **12. Settlement and ADR:**

9 The parties discussed Alternative Dispute Resolution during the Rule 26(f) conference and
10 are in the process of negotiating an ADR plan. The parties filed their ADR certifications (Docket
11 Nos. 37 (Oracle America), 38 (Google)) and a notice of need for ADR telephone conference.
12 (Docket No. 39.) The parties are mindful of the Court’s proposal to refer the matter to a
13 Magistrate Judge for settlement purposes and will continue to meet and confer on reaching a
14 stipulation delineating the ADR plan.

15 **13. Consent to Magistrate Judge For All Purposes:**

16 The parties do not consent to assignment to a Magistrate Judge for all purposes.

17 **14. Other References:**

18 This case is not suitable for reference to binding arbitration, a special master, or the
19 Judicial Panel on Multidistrict Litigation.

20 **15. Narrowing of Issues:**

21 At this time, the parties do not foresee bifurcating any issues, claims, or defenses. Subject
22 to the progression of discovery, the parties may be able to narrow certain issues via stipulated
23 facts.

24 **16. Expedited Schedule:**

25 The parties do not believe this case is appropriate for an expedited schedule.

1 **17. Scheduling:**

2 The Court ordered the parties to respond to its Tentative Case Management Order.
3 (Docket No. 50.) The parties’ responses to each paragraph of the Tentative Case Management
4 Order are listed in Exhibit A.

5 **18. Trial:**

6 The parties expect trial to last three weeks.

7 **19. Disclosure of Non-party Interested Entities or Persons:**

8 Each party has filed its Certification of Interested Entities or Persons.

9 Oracle America’s Certification of Interested Entities or Persons (Docket No. 28) states as
10 follows:

11 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

12 Pursuant to Civil Local Rule 3-16, the undersigned certifies that the following
13 listed persons, associations of persons, firms, partnerships, corporations
14 (including parent corporations) or other entities (i) have a financial interest in
15 the subject matter in controversy or in a party to the proceeding, or (ii) have a
16 non-financial interest in that subject matter or in a party that could be
substantially affected by the outcome of this proceeding: Oracle Systems
Corporation, Oracle Global Holdings, Inc., StorageTek International
Corporation, and Oracle Corporation.

17 Google’s Certification of Interested Entities or Persons (Docket No. 16) states as follows:

18 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS,
19 PURSUANT TO CIVIL L.R. 3-16**

20 Pursuant to Civil L.R. 3-16, defendant Google Inc., through the undersigned,
21 certifies that as of this date, other than the named parties and their
22 shareholders, there is no interest to report under Civil Local Rule 3-16.

23 **20. Miscellaneous Issues:**

24 Google proposes that the parties follow the process and schedule in place for patent
25 disclosures, as described in Paragraph 17 and Exhibit A, to govern the copyright claim as well.
26 Oracle America’s position is that the copyright claim should proceed under the standard Rules of
27 Civil Procedure and Local Civil Rules.

28 The parties will adhere to the Court’s Supplemental Order Setting Initial Case
Management Conference in Civil Cases Before Judge Alsup. (Docket No. 26). Pursuant to

1 Paragraph 11, however, the parties jointly propose the following modifications to Paragraph 23(a)
2 of that Order regarding Rule 30(b)(6) depositions:

3 The parties respectfully request that Paragraph 23(a) be modified to permit up to a total of
4 15 30(b)(6) subject matters from each party. Good cause exists for this requested change because
5 the number of claims, counterclaims, and affirmative defenses likely implicates an unusually
6 large number of factual issues relating to the Android and Java platforms.

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Attorneys for Plaintiff
ORACLE AMERICA, INC.

Dated: November 11, 2010

By: /s/ Richard S. Ballinger

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Dated: November 11, 2010

By: /s/ Donald F. Zimmer, Jr. /s/
DONALD F. ZIMMER, JR.

Attestation of Concurrence

I, Richard S. Ballinger, as the ECF user and filer of this document, attest that concurrence in the filing of this document has been obtained from each of the above signatories.

Dated: November 11, 2010

By: /s/ Richard S. Ballinger
Counsel to Plaintiff
ORACLE AMERICA, INC.

1 **EXHIBIT A**

2 **Response to the Court's Tentative Case Management Order**

3

Para-graph	Summary of Tentative Rule	Oracle America's Response	Google's Response
4 5 6 7 8	1 Initial disclosures to be completed by November 22, 2010	The parties agreed to exchange initial disclosures by December 2, 2010; Oracle America wishes to clarify that the parties may supplement initial disclosures pursuant to FRCP 26(e)	The parties agreed to exchange initial disclosures by December 2, 2010; Google agrees with Oracle America's clarification.
9	2 Leave to add new parties or pleading amendments must be sought by December 31, 2010	Accepted	Agreed
11 12 13 14 15 16	3 Claim construction is scheduled for April 20, 2011 at 1:30 p.m.; The parties must file a proposed schedule leading up to the hearing by November 24, 2010	Accepted	In view of its lead counsels' scheduling conflicts involving currently scheduled trials that conflict with both the tentative Markman hearing date and trial date, Google proposes moving all tentative dates in 2011, beginning with the tutorial, four weeks back.
17 18 19 20 21 22 23	4 Parties are to isolate no more than six phrases for claim construction; The Court will construe other terms during summary judgment or before trial; A tutorial is scheduled for April 6, 2011 at 1:30 p.m.	Accepted	Google proposes that any limitation on the number of phrases for claim construction be accompanied by a corresponding limitation on the number of claims asserted, noting that currently there are 158 claims in the asserted patents. Otherwise, agreed subject to the comments in row 3.
24 25	5 Non-expert discovery cut-off is July 29, 2011	Accepted	Agreed subject to the comments in row 3.
26 27 28	6 Deadline for producing opinions of counsel under Patent L.R. 3-8 is 28 days before the non-expert discovery cut-off	Accepted	Agreed

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Para-graph	Summary of Tentative Rule	Oracle America's Response	Google's Response
7	<p>Deadline for opening expert reports is July 29, 2011;</p> <p>Deadline for opposition reports is 14 days thereafter;</p> <p>Deadline for rebuttal reports is 7 days thereafter;</p> <p>Cut-off for expert discovery is 14 days after deadline for rebuttal reports;</p> <p>Experts may be deposed once, either during expert discovery period, unless the expert is used for different reports</p> <p>Deadline for serving lists of issues on which parties will offer expert testimony in case-in-chief is 28 days before deadline for opening reports</p>	Accepted	Agreed subject to the comments in row 3.
8	<p>Damages expert reports are due 70 days before other experts are due;</p> <p><i>Daubert</i> motions are due within 14 days of opening damages expert reports;</p> <p>Opposition damages expert reports are due 14 days after ruling on any <i>Daubert</i> motion;</p> <p>Reply damages expert reports are due 7 days after opposition reports</p>	Accepted	Agreed
9	<p>Cut-off for past damages is the date of the expert report;</p> <p>Expert may try to project future damages;</p> <p>Experts may update reports with timely leave or by written stipulation</p>	Accepted	Agreed
10	<p>Expert trial testimony is ordinarily limited to matters disclosed in reports;</p> <p>Expert must learn and testify to full amount of billing and unbilled time</p>	Accepted	Agreed

1	Para- graph	Summary of Tentative Rule	Oracle America's Response	Google's Response
2	11	Experts should avoid vouching for credibility of witnesses, absent percipient knowledge	Accepted	Agreed
3				
4	12	Non-discovery motions may be noticed on Thursdays at 8:00 a.m., and counsel need not request motion dates; The Court will hear oral argument where a written request is filed stating that a young lawyer will conduct the argument	Accepted	Agreed
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9	13	Deadline for filing dispositive motions is September 8, 2011	Accepted	Agreed subject to the comments in row 3.
10	14	The Final Pretrial Conference is October 17, 2011 at 9:00 p.m.	Accepted	Agreed subject to the comments in row 3.
11				
12	15	Jury Trial begins on October 31, 2011 at 7:30 a.m.	Accepted	Agreed subject to the comments in row 3.
13	16	Counsel may not stipulate around the foregoing dates without Court approval	Accepted	Agreed
14				
15	17	The parties shall not ask for extensions because of settlement negotiations, or delayed negotiations; Continuances will not be granted without competent and detailed declarations setting forth good cause	Accepted	Agreed
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19	18	All filings and appearances must be made unless and until a dismissal fully resolving the case is received	Accepted	Agreed
20				
21				
22	19	The parties are to read and follow this Court's supplemental orders, standing orders, and guidelines	Accepted	Agreed
23				
24	20	The matter is referred to a Magistrate Judge for settlement/mediation	Oracle America agrees that mediation is appropriate in this case, but would prefer to discuss ADR options during the telephonic ADR conference noticed for Nov. 16, 2010. (Docket No. 49).	Google agrees with Oracle America's preference.
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Para-graph	Summary of Tentative Rule	Oracle America's Response	Google's Response
21	The case is referred to a Magistrate Judge for resolution of all discovery disputes; The deadline for bringing discovery motions or extension motions based on discovery violations is 45 days prior to the fact discovery cutoff, and 10 days prior to the expert discovery cutoff	Accepted	Agreed
22	Pretrial disclosures under FRCP 26(a)(3) and objections required by FRCP 26(a)(3) must be made on the schedule established by the rule	Accepted	Agreed