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20   UNITED STATES DISTRICT COURT

21   NORTHERN DISTRICT OF CALIFORNIA

22   SAN FRANCISCO DIVISION

23

24 | ORACLE AMERICA, INC. | CASE NO. CV 10-03561 WHA |
|---|---|
| Plaintiff, | **[PROPOSED] ORDER GRANTING ORACLE AMERICA'S MOTION FOR ADMINISTRATIVE RELIEF TO DEEM FACTS ADMITTED BY GOOGLE** |
| v. | |
| GOOGLE INC. | Judge: Honorable William H. Alsup |
| Defendant. | |

The Court has read and considered Oracle's Motion for Administrative Relief to Deem Facts Admitted by Google. Based on the arguments presented in the motion, the pleadings on file, and any other relevant matter, the following facts shall be deemed admitted for purposes of the upcoming trial:

1. Google has admitted that the 37 Java APIs meet the threshold for originality required by the Constitution.

2. Google has admitted that the Java programming language is distinct from the Java APIs and class libraries.

3. Google has admitted that the only way to demonstrate compatibility with the Java specification is by meeting all of the requirements of Sun's Technology Compatibility Kit ("TCK") for a particular edition of Sun's Java.

4. Google has admitted: TCKs were only available from Sun, initially not available as open source, were provided solely at Sun's discretion, and included several restrictions, such as additional licensing terms and fees. In essence, although developers were free to develop a competing Java virtual machine, they could not openly obtain an important component needed to freely benefit from Sun's purported open-sourcing of Java.

5. Google has admitted: Although Sun offered to open source the TCK for Java SE, Sun included field of use ("FOU") restrictions that limited the circumstances under which Apache Harmony users could use the software that the Apache Software Foundation created. Sun refused the ASF's request for a TCK license without FOU restrictions.

IT IS SO ORDERED.

Date: _____   _____
                                      Honorable William H. Alsup
                                      Judge of the United States District Court