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17 *Attorneys for Plaintiff*
 ORACLE AMERICA, INC.

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

22 ORACLE AMERICA, INC.

23 Plaintiff,

24 v.

25 GOOGLE INC.

26 Defendant.

Case No. CV 10-03561 WHA

**DECLARATION OF MARC DAVID
 PETERS IN SUPPORT OF ORACLE
 AMERICA'S MOTION FOR
 ADMINISTRATIVE RELIEF TO DEEM
 FACTS ADMITTED BY GOOGLE**

Dept.: Courtroom 8, 19th Floor
 Judge: Honorable William H. Alsup

1 I, Marc David Peters, declare as follows:

2 I am an attorney at Morrison & Foerster LLP and am counsel of record to Plaintiff Oracle
3 America, Inc. (“Oracle”). I have personal knowledge of the matters set forth herein and, if called
4 to testify, could and would testify competently to the following.

5 1. On April 3, 2012, my colleague Daniel P. Muino sent an email to counsel for
6 Google, Inc. (“Google”) proposing thirteen separate stipulations for purposes of trial, including:

- 7 • The specifications for the 37 Java API packages at issue, and the selection, arrangement,
8 and structure of API elements within those specifications, meet the Copyright Act’s
9 standard for originality.

10 A true and correct copy of the above-referenced correspondence is attached as Exhibit 1.

11 2. On April 4, 2012, counsel for Google responded by email, declining to accept the
12 proposed stipulation above. *See* Exhibit 1.

13 3. On April 10, 2012, I sent an email to counsel for Google proposing alternate
14 stipulations on admissions by Google for purposes of trial, including:

- 15 • Google has admitted that the 37 Java APIs meet the threshold for originality required by
16 the Constitution.
- 17 • Google has admitted that the Java programming language is distinct from the Java APIs
18 and class libraries.
- 19 • Google has admitted that the only way to demonstrate compatibility with the Java
20 specification is by meeting all of the requirements of Sun’s Technology Compatibility Kit
21 (“TCK”) for a particular edition of Sun’s Java.
- 22 • Google has admitted: TCKs were only available from Sun, initially not available as open
23 source, were provided solely at Sun’s discretion, and included several restrictions, such as
24 additional licensing terms and fees. In essence, although developers were free to develop
25 a competing Java virtual machine, they could not openly obtain an important component
26 needed to freely benefit from Sun’s purported open-sourcing of Java.

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ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Marc David Peters has concurred in this filing.

Dated: April 12, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs