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19	UNITED STATES DISTRICT COURT		
20	NORTHERN DISTRICT OF CALIFORNIA		
21	SAN FRANCISCO DIVISION		
22	ORACLE AMERICA, INC.	Case No. CV 10-03561 WHA	
23	Plaintiff,	DECLARATION OF MARC DAVID PETERS IN SUPPORT OF ORACLE	
24	V.	AMERICA'S MOTION FOR ADMINISTRATIVE RELIEF TO DEEM	
25	GOOGLE INC.	FACTS ADMITTED BY GOOGLE	
26	Defendant.	Dept.: Courtroom 8, 19th Floor Judge: Honorable William H. Alsup	
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	PETERS DECL. ISO ORACLE MOTION TO DEEM FACTS ADMITTED BY GOOGLE CASE NO. CV 10-03561 WHA sf-3130521		

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. 27 28

1	• Google has admitted: Although Sun offered to open source the TCK for Java SE, Sun		
2	included field of use ("FOU") restrictions that limited the circumstances under which		
3	Apache Harmony users could use the software that the Apache Software Foundation		
4	created. Sun refused the ASF's request for a TCK license without FOU restrictions.		
5	The email attached a draft brief explaining the underlying reasoning. A true and correct copy of		
6	the above-referenced correspondence is attached as Exhibit 2.		
7	4. On April 11, 2012, counsel for Google responded. Counsel declined to accept		
8	most of Oracle's proposals. Counsel placed material qualifications on the first proposal that		
9	rendered it unacceptable to Oracle. See Exhibit 2. I met and conferred with counsel for Google		
10	the evening of April 11, but we were unable to reach agreement.		
11	I declare under penalty of perjury that the foregoing is true and correct and that this		
12	declaration was executed on April 12, 2012 at San Francisco, California.		
13	/s/ Marc David Peters		
14	Marc David Peters		
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1	ATTESTATION OF E-FILED SIGNATURE		
2	I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this		
3	Declaration. In compliance with General Order 45, X.B., I hereby attest that Marc David Peters		
4	has concurred in this filing.		
5	Dated: April 12, 2012	/s/ Michael A. Jacobs	
6		Michael A. Jacobs	
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