

# **EXHIBIT 1**

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**From:** Reid P. Mullen <RMullen@kvn.com>  
**Sent:** Wednesday, April 04, 2012 3:00 PM  
**To:** Muino, Daniel P.; Oracle MoFo Service List; Oracle-Google@BSFLLP.com  
**Cc:** DALVIK-KVN-ATTY; dalvik-KS@KSLAW.com; GT\_Google@gtlaw.com  
**Subject:** RE: Proposed fact stipulations

Dan:

I write to respond with Google's position on several issues we discussed yesterday, and to respond to Oracle's proposed fact stipulations. First, we are willing to expand from 7 to 10 the number of witnesses on the rolling witness lists required by Judge Alsup's recent order. We propose that the parties exchange the first such rolling list on Monday, April 9 at noon, which will be the parties' respective good faith witness lists of the first ten witnesses in their respective cases. We further propose that the parties agree that, by noon on April 10, the parties will exchange any modifications to that initial list. The witness-order list required by Judge Alsup's standing order should be made on the timetables described in that order.

Second, we have reviewed the documents Oracle wishes to add to the joint exhibit list, and do not agree that those documents properly can be added to the exhibit lists given the fact that the deadline has passed and given the inadmissibility of many of those documents in any event. In fact, the majority of those documents do not appear to fall into the categories you listed on our call yesterday.

Third, as described below, Google will stipulate to modified versions of Oracle's fact stipulation proposal nos. 1, 10, 11, and 12. Google will not stipulate to the remainder of Oracle's fact stipulation proposals.

Third, as described below, Google will stipulate to modified versions of Oracle's fact stipulation proposal nos. 1, 10, 11, and 12. Google will not stipulate to the remainder of Oracle's fact stipulation proposals.

**Oracle Proposed Stipulation No. 1.** Google will stipulate to the following, modified version of Oracle's proposal: Android incorporates [substantially the](#) same selection, arrangement and structure of API elements as Java 2 SE does for the 37 API packages at issue.

**Oracle Proposed Stipulation No. 10.** Google will stipulate to the following, modified version of Oracle's proposal: On July 20, 2010, representatives of Oracle (in-house attorneys T.J. Angioletti, Matthew Sarboraria, and George Simion) [met in person with](#) representatives of Google (in-house attorneys Ben Lee, Eric Schulman, and Joshua McGuire) [to disclose for the first time](#) Oracle's [patent-infringement](#) contentions against Google..

**Oracle Proposed Stipulation No. 11.** Google will stipulate to the following, modified version of Oracle's proposal: [The Android Software Development Kit was publicly released on November 12, 2007.](#) The first version of Google's Android platform was publicly released on October 21, 2008. From that date to the present, Google has released at least the following versions of Android: Android 1.0, 1.1, 1.5 ("Cupcake"), 1.6 ("Donut"), 2.0/2.1 ("Éclair"), 2.2 ("Froyo"), and 2.3 ("Gingerbread").

**Oracle Proposed Stipulation No. 12.** Google will stipulate to the following, modified version of Oracle's proposal: [Two of the phones at issue in this case,](#) Google's Nexus One and Nexus S phones, are "Google experience" devices installed with versions of Android supplied by Google.

Finally, please let us know your position on the in-trial briefing schedule we discussed yesterday, and the time to exchange opening-related disclosures. Thanks very much.

Reid

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**From:** Muino, Daniel P. [<mailto:DMuino@mofo.com>]  
**Sent:** Wednesday, April 04, 2012 12:55 PM  
**To:** Reid P. Mullen; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)  
**Cc:** DALVIK-KVN-ATTY; [dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)  
**Subject:** RE: Proposed fact stipulations

O.K.

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**From:** Reid P. Mullen [<mailto:RMullen@kvn.com>]  
**Sent:** Wednesday, April 04, 2012 12:53 PM  
**To:** Muino, Daniel P.; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)  
**Cc:** DALVIK-KVN-ATTY; [dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)  
**Subject:** RE: Proposed fact stipulations

Dan: we need to push back the response time once again. We will aim to get you a response by 3:00 p.m. today. Thanks.

Reid

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**From:** Muino, Daniel P. [<mailto:DMuino@mofo.com>]  
**Sent:** Wednesday, April 04, 2012 10:46 AM  
**To:** Reid P. Mullen; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)  
**Cc:** DALVIK-KVN-ATTY; [dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)  
**Subject:** Re: Proposed fact stipulations

That's fine.

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**From:** Reid P. Mullen [<mailto:RMullen@kvn.com>]  
**Sent:** Wednesday, April 04, 2012 10:41 AM  
**To:** Muino, Daniel P.; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com) <[Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)>  
**Cc:** DALVIK-KVN-ATTY <[DALVIK-KVN-ATTY@kvn.com](mailto:DALVIK-KVN-ATTY@kvn.com)>; [dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com) <[dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com)>; [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com) <[GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)>  
**Subject:** RE: Proposed fact stipulations

Dan:

We are still considering Oracle's proposed fact stipulations, and would like to push back the parties' response time to 1:00 p.m. today. Thanks.

Reid

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**From:** Muino, Daniel P. [<mailto:DMuino@mofo.com>]  
**Sent:** Tuesday, April 03, 2012 3:09 PM  
**To:** Reid P. Mullen; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)  
**Cc:** DALVIK-KVN-ATTY; [dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)  
**Subject:** RE: Proposed fact stipulations

Reid,

For discussion at 3:15pm, here are the stipulations we propose:

1. Android incorporates the same selection, arrangement and structure of API elements as Java 2 SE does for the 37 API packages at issue.
2. The specifications for the 37 Java API packages at issue, and the selection, arrangement, and structure of API elements within those specifications, meet the Copyright Act's standard for originality.
3. The only way to demonstrate compatibility with the Java API specifications is by meeting all of the requirements of Sun's Technology Compatibility Kit ("TCK") for a particular edition of Sun's Java.
4. Sun registered with the U.S. Copyright Office the code and documentation from various versions of the Java Development Kit ("JDK").
5. By virtue of the copyright registrations of the J2SE and JDK materials, Sun registered its copyrights in the 37 Java API design specifications that Oracle has accused Google of copying into Android.
6. By virtue of the copyright registrations of the J2SE and JDK materials, Sun registered its copyrights in the eleven Java code files that Oracle has accused Google of copying into Android.
7. Sun registered multiple editions of the book "The Java Language Specification" with the U.S. Copyright Office.
8. Sun registered the 1996 book "The Java Application Programming Interface, Volume 1" with the U.S. Copyright Office.
9. Oracle is the current owner of all rights, title, and interest in the Java-related works registered by Sun with the U.S. Copyright Office.
10. On July 20, 2010, representatives of Oracle (in-house attorneys T.J. Angioletti, Matthew Sarboraria, and George Simion) and representatives of Google (in-house attorneys Ben Lee, Eric Schulman, and Joshua McGuire) met in person to discuss Oracle's infringement contentions against Google under the intellectual property in suit.
11. The first version of Google's Android platform was publicly released on October 21, 2008. From that date to the present, Google has released at least the following versions of Android: Android 1.0, 1.1, 1.5 ("Cupcake"), 1.6 ("Donut"), 2.0/2.1 ("Éclair"), 2.2 ("Froyo"), and 2.3 ("Gingerbread").
12. Google's Nexus One and Nexus S phones are "Google experience" devices installed with stock versions of Android supplied by Google, identical to the code available on the public Android git source code repository.
13. Motorola's Droid phone is a "Google experience" device initially installed with a stock version of Android Éclair supplied by Google, identical to the Éclair code available on the public Android git source code repository.

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**From:** Muino, Daniel P.  
**Sent:** Tuesday, April 03, 2012 2:43 PM  
**To:** 'Reid P. Mullen'; Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)  
**Cc:** DALVIK-KVN-ATTY; dalvik-KS ([dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com)); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)  
**Subject:** RE: Proposed fact stipulations

Thanks, Reid. Can we push the call back to 3:15pm?

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**From:** Reid P. Mullen [<mailto:RMullen@kvn.com>]  
**Sent:** Tuesday, April 03, 2012 10:18 AM  
**To:** Oracle MoFo Service List; [Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)

Cc: DALVIK-KVN-ATTY; dalvik-KS ([dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com)); [GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)

Subject: Proposed fact stipulations

Dan – In advance of our meet and confer call today at 3:00 p.m., below are three fact stipulations proposed by Google.

1. **The Java programming language is open and free for anyone to use.**

**Authority:** March 28, 2012 Hrg. Tr. at 81:6-9 (“[MR. JACOBS] “And, of course, just as anyone could write a new novel in the English language, even if the English language was an invented language and protectable, the Java language is free for application programmers, free for them to use.”); *id.* at 67:23-25 (“[THE COURT] And along the way Oracle has dedicated to the public domain, as far as this case is concerned anyway, the use of the Java programming language.”); February 9, 2011 Hrg. Tr. at 8:16-18 (“ [MR. JACOBS] the Java programming language, we’re not asserting that we own that programming language for purposes of this case”); July 21, 2011 Tr. at 50:18-20 (“THE COURT: But you admit that the Java programming language is open to anybody. MR. JACOBS: Yes.”); September 15, 2011 Hrg. Tr. at 12:18-19 (“we are making no claim for the protect[a]b[i]lity under copyright of the Java programming language, in and of itself”).

2. **The names of the Java language API files, packages, classes, and methods are not protected by copyright law.**

**Authority:** September 15, 2011 MSJ Order [Dkt. 433] at 7:27-8:2 (“Google argues that ‘the names of the Java language API files, packages, classes, and methods are not protectable as a matter of law’ (Br. 17). This order agrees. Because names and other short phrases are not subject to copyright, the names of the various items appearing in the disputed API package specifications are not protected.”); *id.* at 8:22-23 (“Having found that the names of the various items appearing in the disputed API package specifications are not protected by copyright on account of the words and short phrases doctrine . . . ”); March 28, 2012 Hrg. Tr. at 68:1-2 (“[THE COURT] The Court has already ruled that the use of the names is not protectable. Like ‘square root’ is not protectable.”).

3. **Aside from a nine-line function that Oracle accuses Google of copying, Oracle does not contend that Android’s source code in any of the accused APIs was copied from the source code used in the Java platforms.**

**Authority:** March 28, 2012 Hrg. Tr. at 4:16-5:1 (“[MR. JACOBS] Three of the 11 files are part of the Java APIs. Specifically, Google copied from java.util.Arrays.java into two Android files, rangeCheck. And Google copied from java.security.CodeSource.java the comments into the test file that Intel contributed to Harmony. . . . The other eight are in other parts of Android. They aren't in the libraries that implement the 37 APIs.”)

*Id.* at 11:12-20:

THE COURT: Comments? Do you mean by that the specifications, or do you mean --

MR. KWUN: No.

THE COURT: -- the part of it that is so-called plain English to the user?

MR. KWUN: It's in the source code file, but it's not actual source code. It's commentary --

THE COURT: Not compiled.

MR. KWUN: Right. So when you compile it, if you remove that text, it has no effect --

THE COURT: Comments don't get compiled, do they?

MR. KWUN: They don't.

THE COURT: So it's just to help the writer of the source code follow what's being done by the source code.

*Id.* at 23:23-24 (“[MR. JACOBS] So we're on comments now. And we have a common understanding of comments. I agree with the previous discussion.

THE COURT: I'm just talking -- I'm only talking about the source code that gets compiled by the computer –

MR. JACOBS: Yes.

THE COURT: -- at this point. So you're saying it's yes and no.

MR. JACOBS: Because there is some code that literally you can line up word for word in that code, in that source code, the noncomment source code, the compiled source code, you can line up those words with the corresponding words in what we're calling the specification.

*Id.* at 41:12-17, 68-3:

THE COURT: All right. So once you get past the declarations, is your source code different than the Java source code?

MR. KWUN: Yes.

THE COURT: Is that part agreed to?

MR. JACOBS: Yes, Your Honor.

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[THE COURT:] The code within the APIs used by Google is not the same code.

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**Reid P. Mullen**

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