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 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
**ORACLE AMERICA’S NOTICE OF
 MOTION AND MOTION FOR
 ADMINISTRATIVE RELIEF
 REGARDING STATEMENT TO
 JURY**
 Dept.: Courtroom 8, 19th Floor
 Judge: Honorable William H. Alsup

1 PLEASE TAKE NOTICE THAT Oracle America, Inc. (“Oracle”) will, and hereby does,
2 respectfully move for administrative relief to supplement this statement to the jury, “The names
3 of the various items appearing in the disputed API package specifications, such as names of API
4 files, packages, classes, and methods, are not protected”, with the following proposed language:

5 The selection or arrangement of the names of the various items in the API package
6 specifications may still be protected by copyright if those names are numerous
7 enough and their selection and arrangement original enough that their combination
8 constitutes an original work. The Court will instruct the jury on this issue
9 following the close of evidence.

10 This Motion is based on the accompanying Memorandum of Points and Authorities, Declaration
11 of Marc Peters, and the entire record in this case.

12 Dated: April 12, 2011

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13 By: /s/ Michael A. Jacobs

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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ORACLE AMERICA'S MOTION
FOR ADMINISTRATIVE RELIEF
REGARDING STATEMENT TO
JURY**

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

1 **I. INTRODUCTION**

2 In light of the Court’s Order Granting in Part Google’s Motion to Deem Issues
3 Undisputed, Oracle moves for an order to supplement this statement to the jury: “The names of
4 the various items appearing in the disputed API package specifications, such as names of API
5 files, packages, classes, and methods, are not protected.” (ECF No. 896.) Immediately after this
6 statement, the jury should also be told:

7 The selection or arrangement of the names of the various items in the API package
8 specifications may still be protected by copyright if those names are numerous
9 enough and their selection and arrangement original enough that their combination
constitutes an original work. The Court will instruct the jury on this issue following
the close of evidence.

10 As shown below, the core of Oracle’s proposed follow-on statement is drawn directly from the
11 Court’s summary judgment order regarding the copyright claim. (ECF No. 433.) More
12 importantly, the proposed follow-on statement is necessary to avoid jury confusion. Before filing
13 this motion, Oracle proposed the follow-on statement to Google. It refused Oracle’s request for a
14 stipulated statement to the jury.

15 **II. ARGUMENT**

16 Oracle submits that the jury should hear this complete and balanced statement of the
17 Court’s summary judgment ruling:

18 The names of the various items appearing in the disputed API package specifications,
19 such as names of API files, packages, classes, and methods, are not protected.

20 The selection or arrangement of the names of the various items in the API package
21 specifications may still be protected by copyright if those names are numerous
22 enough and their selection and arrangement original enough that their combination
constitutes an original work. The Court will instruct the jury on this issue following
the close of evidence.

23 The latter, proposed follow-on statement is needed to avoid jury confusion. If the jury will be
24 told part of the Court’s ruling as a pre-instruction at the outset of the trial, completeness requires
25 that they be told the rest of the ruling, and that the jury will also be instructed further at the close
26 of evidence. Otherwise, the jury will not get the whole description of what is at issue, and there is
27 a significant risk that they will believe that no aspect of the names of the elements in the API
28 package specifications may be protectable under copyright law, which is incorrect and contrary to

1 the Court’s ruling. The jury will not appreciate, much less understand, that they should wait for
2 the Court to instruct them further.

3 The sequencing of this complete statement of ruling, and its core language, are drawn
4 directly from the Court’s summary judgment order:

5 In finding that the *names of the various items appearing in the disputed API*
6 *package specifications are not protected by copyright*, this order does *not foreclose*
7 *the possibility that the selection or arrangement of those names is subject to*
8 *copyright protection*. See *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d
9 1140, 1147 (9th Cir. 2003) (“[A] combination of *unprotectable elements* is eligible
10 for copyright protection only *if those elements are numerous enough and their*
11 *selection and arrangement original enough that their combination constitutes an*
12 *original work* of authorship.”) (emphasis added).

13 (ECF No. 433 at 8 (bolded italics added). As such, Oracle’s proposed follow-on statement
14 accurately reflects the Court’s order on summary judgment. (If the Court prefers, Oracle is
15 willing to adopt the wording of the summary judgment order verbatim.) Thus, the same rationale
16 for instructing the jury on the unprotectability of API names applies equally for giving Oracle’s
17 proposed follow-on statement. (ECF No. 896.) Lastly, Oracle’s proposed follow-on statement is
18 needed to present the hotly disputed copyrightability issue in a fair and balanced way.

19 In the alternative, it would eliminate the risk of jury confusion if the Court would refrain
20 from reading to the jury, or permitting Google to refer to, the statement regarding the
21 uncopyrightability of names until the Court is ready to instruct the jury on what is copyrightable.

22 **III. CONCLUSION**

23 For the reasons above, directly following this statement to the jury, “The names of the
24 various items appearing in the disputed API package specifications, such as names of API files,
25 packages, classes, and methods, are not protected,” the jury should also be told: “The selection or
26 arrangement of the names of the various items in the API package specifications may still be
27 protected by copyright if those names are numerous enough and their selection and arrangement
28 original enough that their combination constitutes an original work. The Court will instruct the
jury on this issue following the close of evidence.”

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Dated: April 12, 2012

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