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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 PETERS IN  
 SUPPORT OF ORACLE AMERICA'S  
 MOTION FOR ADMINISTRATIVE  
 RELIEF REGARDING STATEMENT TO  
 JURY**

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



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**ATTESTATION**

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

Date: April 12, 2012

/s/ Michael A. Jacobs

# **EXHIBIT 1**

**From:** Matthias Kamber <MKamber@kvn.com>  
**Sent:** Wednesday, April 11, 2012 5:49 PM  
**To:** Peters, Marc D.; dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN;  
'GT\_Google@gtlaw.com' (GT\_Google@gtlaw.com) (GT\_Google@gtlaw.com)  
**Cc:** Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX  
**Subject:** RE: Oracle v. Google - proposed admissions

Dear Marc,

As to the below request, Google does not agree to appending the language you propose to the statement. Unlike the statements that the Court deemed admitted, Oracle's statement is more akin to a jury instruction. We see no reason for appending this language in light of the fact that the Court will separately provide both preliminary and final instructions on the relevant issues.

Regards,

Matthias

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**From:** Peters, Marc D. [mailto:MDPeters@mofo.com]  
**Sent:** Wednesday, April 11, 2012 1:58 PM  
**To:** dalvik-KS (dalvik-KS@KSLAW.com); DALVIK-KVN; 'GT\_Google@gtlaw.com' (GT\_Google@gtlaw.com) (GT\_Google@gtlaw.com)  
**Cc:** Oracle-Google (Oracle-Google@BSFLLP.com); Oracle-ProjectX  
**Subject:** RE: Oracle v. Google - proposed admissions

Dear counsel,

We thought that the following rephrasing may be clearer and more acceptable:

Directly following the statement "The names of the various items appearing in the disputed API package specifications, such as names of API files, packages, classes, and methods, are not protected," the jury shall be told the following: "The selection or arrangement of the names of the various items in the API package specifications may still be protected by copyright if those names are numerous 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."

This language is drawn from the Court's order at page 8 of ECF No. 433.

Best regards,  
Marc

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**From:** Peters, Marc D.  
**Sent:** Wednesday, April 11, 2012 11:38 AM  
**To:** dalvik-KS ([dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com)); DALVIK-KVN ([DALVIK-KVN@kvn.com](mailto:DALVIK-KVN@kvn.com)); 'GT\_Google@gtlaw.com' ([GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)) ([GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com))

**Cc:** Oracle-Google ([Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)); Oracle-ProjectX  
**Subject:** RE: Oracle v. Google - proposed admissions

Dear counsel,

In light of the Court's order of this morning (Dkt. 896), would Google agree that directly following the statement "The names of the various items appearing in the disputed API package specifications, such as names of API files, packages, classes, and methods, are not protected," the jury shall be told the following: "The selection, arrangement, and structure of items in the API package specifications may be protected. The Court will instruct the jury on this issue following the close of evidence." This language corresponds to the Court's language in the 9/15/11 MSJ Order: "This order finds that the names of the various items appearing in the disputed API package specifications are not protected by copyright. This order makes no finding as to whether any other elements of the API package specifications (or their selection or arrangement) are protected or infringed." (ECF No. 433 at 13.) Please let me know by 3pm.

Best regards,  
Marc

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**From:** Peters, Marc D.  
**Sent:** Tuesday, April 10, 2012 11:37 PM  
**To:** dalvik-KS ([dalvik-KS@KSLAW.com](mailto:dalvik-KS@KSLAW.com)); DALVIK-KVN ([DALVIK-KVN@kvn.com](mailto:DALVIK-KVN@kvn.com)); 'GT\_Google@gtlaw.com' ([GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com)) ([GT\\_Google@gtlaw.com](mailto:GT_Google@gtlaw.com))  
**Cc:** Oracle-Google ([Oracle-Google@BSFLLP.com](mailto:Oracle-Google@BSFLLP.com)); Oracle-ProjectX  
**Subject:** Oracle v. Google - proposed admissions

Dear counsel,

Please let me know by 3pm Wednesday if Google will stipulate to one or more of the admissions identified in the attached proposed order. The factual and legal support for these admissions is found in the attached draft motion.

Best regards,  
Marc

Marc David Peters, Ph.D.  
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