

EXHIBIT A

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST, #84065
2 rvannest@kvn.com
CHRISTA M. ANDERSON, #184325
3 canderson@kvn.com
DANIEL PURCELL, #191424
4 dpurcell@kvn.com
633 Battery Street
5 San Francisco, CA 94111-1809
Tel: 415.391.5400
6 Fax: 415.397.7188

KING & SPALDING LLP
DONALD F. ZIMMER, JR. - #112279
fzimmer@kslaw.com
CHERYL A. SABNIS - #224323
csabnis@kslaw.com
101 Second Street, Suite 2300
San Francisco, CA 94105
Tel: 415.318.1200
Fax: 415.318.1300

7 KING & SPALDING LLP
SCOTT T. WEINGAERTNER
8 (Pro Hac Vice)
sweingaertner@kslaw.com
9 ROBERT F. PERRY
rperry@kslaw.com
10 BRUCE W. BABER (Pro Hac Vice)
1185 Avenue of the Americas
11 New York, NY 10036
Tel: 212.556.2100
12 Fax: 212.556.2222

IAN C. BALLON - #141819
ballon@gtlaw.com
HEATHER MEEKER - #172148
meekerh@gtlaw.com
GREENBERG TRAURIG, LLP
1900 University Avenue
East Palo Alto, CA 94303
Tel: 650.328.8500
Fax: 650.328-8508

13 Attorneys for Defendant
14 GOOGLE INC.

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 ORACLE AMERICA, INC.,
20 Plaintiff,
21 v.
22 GOOGLE INC.,
23 Defendant.

Case No. 3:10-cv-03561-WHA

**DECLARATION OF ROBERT VAN
NEST IN SUPPORT OF GOOGLE
INC.'S OPPOSITION TO ORACLE
AMERICA, INC.'S MOTION TO
EXCLUDE EVIDENCE REGARDING
LICENSE, IMPLIED LICENSE, AND
EQUITABLE ESTOPPEL DEFENSES**

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

1 I, ROBERT VAN NEST, declare as follows:

2 1. I am a partner with the law firm of Kecker & Van Nest LLP, counsel to Google
3 Inc. (“Google”) in the present case. I submit this declaration in support of Google’s Opposition
4 to Oracle America, Inc.’s (“Oracle”) Motion to Exclude Evidence Regarding License, Implied
5 License, and Equitable Estoppel Defenses (“Motion”). I have knowledge of the facts set forth
6 herein, and if called to testify as a witness thereto could do so competently under oath.

7 2. On April 15, 2012, starting at approximately 1:00 pm, Bruce Baber and I met and
8 conferred with Michael Jacobs, counsel for Oracle, by telephone regarding the parties’ opening
9 statement presentations, which we had exchanged the day before. Daniel Muino, counsel for
10 Oracle, may also have been in attendance for some or all of the call.

11 3. During our call, Mr. Jacobs stated that Oracle had “in the works” a motion in
12 limine attacking Google’s equitable defenses, and that Oracle “might” file the motion if Oracle
13 had the motion ready in time.

14 4. Mr. Jacobs did not identify which equitable defenses Oracle might attack or the
15 relief that Oracle would seek in the motion.

16 5. Mr. Jacobs did not identify the basis for any motion, other than referencing
17 Google’s interrogatory answers and objecting to Google’s inclusion in its opening presentation
18 of excerpts from an official Sun Microsystems blog authored by its then Chief Executive Officer,
19 Jonathan Schwartz (TX 2352). Among other things, that blog post congratulates Google on its
20 announcement of Android, and says that “Google and the Open Handset Alliance just strapped
21 another set of rockets to the [Java] community’s momentum.”

22 6. Oracle did not provide written notice, prior to 3:00 pm, of its intent to file its
23 Motion, as required by Paragraph 3 of Court’s Order Regarding Trial Procedures (Dkt. No. 890).

24 7. Shortly after 6:00 pm on April 15, 2012, I received notice via the Court’s ECF
25 system that Oracle filed its Motion. The notice states, “The following transaction was entered by
26 Jacobs, Michael on 4/15/2012 at 6:01 PM and filed on 4/15/2012.”

27 8. At 6:54 pm, Daniel Muino wrote to state Oracle’s belief that that my conversation
28

1 with Mr. Jacobs “suffices” as written notice in accordance with the Court’s Order. A copy of
2 Mr. Muino’s email is attached to Google’s opposition brief as Exhibit B.

3 I declare under penalty of perjury that the foregoing is true and correct and that this
4 declaration was executed at San Francisco, California on April 15, 2012.

5
6 By: /s/ Robert Van Nest
7 ROBERT A. VAN NEST

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28