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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No. CV 10-03561 WHA

**ORACLE'S STATEMENT REGARDING
MOTIONS TO DEEM ISSUES
UNDISPUTED**

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

1 The Court requested that the parties brief whether the facts the parties have sought to establish
2 in their recently filed motions (Dkt. 861, 908) would be conclusive as to those facts, or simply
3 admissible as proof of those facts.

4 The facts and issues that the parties have moved to deem undisputed do not stand on equal
5 footing. Oracle moved to deem admitted several *factual* assertions in Google’s counterclaims and
6 trial briefs. (Dkt. 908.) Google’s factual assertions in those pleadings are judicial admissions.
7 “Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial
8 admissions conclusively binding on the party who made them.” *Am. Title Ins. Co. v. Lacelaw Corp.*,
9 861 F.2d 224, 226 (9th Cir. 1988) (emphasis supplied). This includes factual stipulations in trial
10 briefs. *United States v. Davis*, 332 F.3d 1163, 1168 (9th Cir. 2003). Judicial admissions “have the
11 effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.”
12 *Id.*; see also *NLRB v. Consolidated Bus. Transit, Inc.* 577 F.3d 467, 475 (2nd Cir. 2009) (“admissions
13 contained in pleadings are binding even where the admitting party later produces contrary
14 evidence.”).

15 Three of the facts that Oracle moved to deem admitted are contained exclusively in Google’s
16 counterclaims—its pleadings. (Dkt. 908.) Those facts are unequivocal factual statements and should
17 be deemed judicially admitted. (*Id.* at C, D, and E.) In addition, Google admitted that the 37 Java
18 APIs meet the threshold for originality required by the Constitution in its trial brief, which, if not an
19 automatic judicial admission, may also be considered an admission at the discretion of the trial court.
20 *Am. Title*, 861 F.2d at 227. Indeed, Google advocated for its statement to be a judicial admission
21 when it asserted that originality need not be submitted to the jury at all. (Dkt. 908 at 1 (“The jury
22 therefore need not be asked to address whether the APIs are original.”).) Finally, while Google
23 admitted that the Java programming language is distinct from the Java class libraries in its pleadings
24 (its counterclaims), it admitted that the Java programming language is distinct from the APIs in its
25 expert report. (See Dkt. 908) Oracle does not oppose treating admissions in *non-pleading*
26 documents as simple evidentiary admissions, rather than judicial admissions. (Dkt. 908 at B.)

27 The two issues the Court has held “undisputed” (as Google put it in its motion) are not factual
28 judicial admissions. Each is a restatement of an issue of *law*, which may be why Google called them

1 “issues” rather than “facts” in its motion. (*See* Dkt. 861.) First, Google moved to deem “undisputed”
2 a legal conclusion as to the asserted status of the Java programming language based entirely on
3 statements made during oral argument. (Dkt. 861; *see also* Feb. 9, 2011 Hrg. Tr. at 8:8-20 (“we’re
4 not asserting that we own that programming language for purposes of this case”); Sept. 15, 2011 Hrg.
5 Tr. at 12:17-25 (“we make no claim that that is a violation of our copyright rights”); March 28, 2012
6 Hrg. Tr. 81:2-9 (“So we don’t have to visit, in this case, the protectability of the programming
7 language, as such. And that’s why we make no claim about the protectability of the programming
8 language.”).) Oracle’s decision to bring the particular claim that it did is not a judicial admission.
9 Statements in oral argument about counsel’s conception of the legal theory of a case are not judicial
10 admissions. *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir. 1972). Treating Oracle’s
11 statements as a judicial admission would be particularly prejudicial given that the Court has reserved
12 the question of whether the Java APIs and libraries should be considered part of the Java
13 programming language. Oracle has clearly and consistently disputed the proposition that Google was
14 free to use the Java APIs in the manner it did.

15 Oracle’s statements, moreover, are not “clear, deliberate, and unambiguous” factual
16 admissions that should be treated as judicial admissions. *Robinson v. McNeil Consumer Healthcare*,
17 615 F3d 861, 872 (7th Cir. 2010) (holding that counsel’s statement in closing argument was not
18 “clear, deliberate, and unambiguous” and should not be treated as an admission; “[i]f plaintiff’s
19 contention were accepted, statements in opening and closing arguments, in making objections, at side
20 bars, and in questioning witnesses would be treated as pleadings and searched for remarks that might
21 be construed as admissions though neither intended nor understood as such.”).

22 Similarly, the Court’s holdings as to the copyrightability of the API names should not be
23 given the status of a party judicial admission. Oracle has never admitted in any pleadings or any
24 other paper filed with the Court that the names of API files, packages, classes, and methods are not
25 protected by copyright.

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