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*International Business Machines Corporation*  
 6

7 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 8 SAN JOSE DIVISION

9 VASUDEVAN SOFTWARE, INC.,  
 10 Plaintiff,  
 11 vs.  
 12 INTERNATIONAL BUSINESS MACHINES  
 CORP. AND ORACLE CORP.  
 13 Defendants.  
 14

CASE NO. 5:09-CV-05897-RS

**JOINT STIPULATION REGARDING  
 SOURCE CODE  
 AS AMENDED BY THE COURT**

**[Re: Docket No. 145]**

15 **INTERNATIONAL BUSINESS MACHINES CORPORATION AND VASUDEVAN  
 SOFTWARE INC.'S JOINT STIPULATION REGARDING SOURCE CODE**  
 16

17 Defendant International Business Machines Corporation (“IBM”) and Plaintiff, Vasudevan  
 18 Software, Inc. (“VSi”) enter into this stipulation to allow VSi immediate access to IBM’s source  
 19 code pursuant to Patent Local Rule 3-4. The parties are attempting to resolve disputes regarding  
 20 the form of the protective order to govern the litigation, but it is likely the parties will need to  
 21 submit these disputes to the Court for resolution. Upon entry of a stipulated protective order by  
 22 the Court, the provisions of that protective order shall supercede *nunc pro tunc* all provisions of  
 23 this stipulation. IBM and VSi agree as follows:

- 24 1. IBM will produce its source code for review by VSi in the Houston office of Hogan  
 25 Lovells.  
 26 2. Who may review: VSi may disclose any information or item designated “HIGHLY  
 27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” only to:  
 28

1 a. VSi's Outside Counsel of record in this action, as well as employees of said  
2 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who  
3 have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit  
4 A;

5 b. Experts for VSi that have been disclosed and not objected to by IBM. Each  
6 VSi expert that will review IBM's source code must agree to the provisions of this Stipulation and  
7 sign as such the exhibit attached to this Stipulation. Copies of the complete, signed exhibit should  
8 be provided to IBM at least two days before reviewing the source code.

9 c. the Court and its personnel; and

10 d. current employees of IBM that have access to the source code in their  
11 normal course of business.

12 3. Designation: IBM need not designate the source code for protection until after VSi  
13 has indicated which material it would like copied and produced. During the inspection and before  
14 the designation, all of the source code made available for inspection shall be deemed "HIGHLY  
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE." After VSi has identified  
16 the documents it wants copied and produced, IBM must determine which documents, or portions  
17 thereof, qualify for protection, then, before producing the specified documents, IBM must affix  
18 the appropriate legend ("HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE  
19 CODE") at the top of each page that contains protected source code.

20 4. Protections: Source code designated "HIGHLY CONFIDENTIAL –  
21 ATTORNEYS' EYES ONLY – SOURCE CODE" shall be subject to the following protections:

22 a. Source code designated as "HIGHLY CONFIDENTIAL – ATTORNEY'S  
23 EYES ONLY – SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY  
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in the draft Protective Order  
25 being negotiated by IBM and VSi, including the Prosecution Bar and Competitive Decision  
26 Making Bar set forth in Paragraphs 10 and 11 of Defendants June 10, 2010 draft Protective Order,  
27 and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL –  
28

1 ATTORNEY’S EYES ONLY – SOURCE CODE” information may be disclosed, as set forth in  
2 Paragraph 2 of this Stipulation.

3 b. Any source code produced in discovery shall be made available for  
4 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business  
5 hours or at other mutually agreeable times. The source code shall be made available for inspection  
6 on a secured computer in a secured room without Internet access or network access to other  
7 computers. VSi shall not copy, remove, or otherwise transfer any portion of the source code onto  
8 any recordable media or recordable device. IBM shall provide the software reasonably necessary  
9 to inspect the source code. The initial inspection date shall be agreed upon by VSi and IBM.  
10 After the initial inspection, each subsequent inspection shall require three business days notice  
11 from VSi.

12 c. VSi may print portions of the source code on colored paper only when  
13 reasonably necessary to facilitate VSi's preparation in this Litigation, including, when reasonably  
14 necessary, to prepare any filing with the Court or to serve any pleadings or other papers on any  
15 other Party; to prepare internal attorney work product materials; or to prepare other necessary case  
16 materials such as testifying expert reports, consulting expert written analyses and related drafts  
17 and correspondences. VSi shall print only such portions as are reasonably necessary for the  
18 purposes for which any part of the source code is printed at the time. Upon printing any such  
19 portions of source code, the printed pages shall be collected by IBM. IBM shall Bates number,  
20 copy on colored paper, and label as “HIGHLY CONFIDENTIAL - ATTORNEY’S EYES ONLY  
21 - SOURCE CODE” any pages printed by VSi. If IBM objects that the printed portions are not  
22 reasonably necessary to any case preparation activity, IBM shall make such objection known to

23 VSi within three (3) business days. If, after meeting and conferring, IBM and VSi cannot resolve  
24 the objection, IBM shall be entitled to seek a Court resolution, within two (2) business days of the  
25 meet and confer, of whether the printed source code in question is not reasonably necessary to any  
26 case preparation activity. In the absence of any objection or a motion to the Court following an  
27 objection within the specified time limits, or upon resolution of any such dispute by the Court,  
28 IBM shall provide one copy of such pages on colored paper to VSi within two (2) business days

directly (in  
voice to voice  
dialogue;  
other forms  
of commun-  
ication are  
not sufficient)

1 and shall retain one copy. The printed pages shall constitute part of the source code produced by  
2 IBM in this action

3 d. Any notes concerning such source code shall not be used to circumvent the  
4 restrictions in the above paragraphs against making copies of the source code. Persons viewing  
5 the notes shall do so in a manner consistent with the restrictions on material designated “HIGHLY  
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE.”

7 e. Nothing in this Stipulation shall be construed to limit how IBM may  
8 maintain material designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –  
9 SOURCE CODE.”

10 f. Other than as provided in Paragraph 4(c) above, VSi will not copy, remove,  
11 or otherwise transfer any source code from the Source Code Computer including, without  
12 limitation, copying, removing, or transferring the source code onto any other computers or  
13 peripheral equipment. VSi will not transmit any source code in any way from the designated  
14 facility.

15 g. VSi may not make any electronic copies of the “HIGHLY  
16 CONFIDENTIAL - ATTORNEY’S EYES ONLY - SOURCE CODE” information. VSi shall  
17 maintain and store any paper copies of the source code or notes related to such source code at the  
18 offices of its Outside Counsel in a manner that prevents duplication of or unauthorized access to  
19 the source code or notes, including, without limitation, storing the source code or notes in a locked  
20 room or cabinet at all times when it is not in use. VSi's outside counsel of record may make no  
21 more than four additional paper copies on colored paper of any portions of the source code printed  
22 pursuant to Paragraph 4(c) above, not including copies attached to court filings, and shall maintain  
23 a log of all copies of the source code (received from IBM) that are provided by VSi to any Expert  
24 (as defined paragraph 2(b)) under the terms of this Stipulation. The log shall include the names of  
25 the recipients and reviewers of copies. Any paper copies of source code shall be stored or viewed  
26 only at (i) the offices of outside counsel of record for VSi; (ii) the site where any deposition is  
27 taken; (iii) the Court; or (iv) any intermediate location necessary to transport the information to a  
28 hearing, trial or deposition. IBM shall not unreasonably deny VSi’s request to make (and log)

1 additional copies, providing that the request is for good cause and for use that otherwise complies  
2 with this Stipulation. IBM shall be entitled to a copy of the log upon request. VSi shall provide a  
3 copy of the log to IBM at the conclusion of the Litigation.

4 h. To the extent portions of source code are quoted in a pleading filed with the  
5 Court, either (1) the entire document will be stamped “HIGHLY CONFIDENTIAL -  
6 ATTORNEY’S EYES ONLY - SOURCE CODE” or (2) those pages containing quoted source  
7 code will be separately bound, and stamped as “HIGHLY CONFIDENTIAL - ATTORNEY’S  
8 EYES ONLY - SOURCE CODE” and (3) shall be filed under seal.

9 i. All paper copies shall be securely destroyed if they are no longer necessary  
10 in the above-captioned matter (*e.g.*, extra copies at the conclusion of a deposition). Copies of  
11 source code that are marked as deposition exhibits shall not be provided to the Court Reporter or  
12 attached to deposition transcripts; rather, the deposition record will identify the exhibit by its  
13 production numbers.

14 5. Nothing in this Stipulation shall obligate the parties to produce any source code,  
15 nor act as an admission that any particular source code is discoverable.

16  
17  
18 DATED: June 24, 2010

By: /s/ Harper Batts

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pursuant to the  
procedures and  
standards set  
forth in Civil  
Local Rule  
79-5 and  
General Order  
62.

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Vasudevan Software, Inc.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of June, 2010, a true and correct copy of the foregoing Joint Stipulation Regarding Source Code was served on all counsel of record via the Court's ECF System.

/s/ Harper Batts

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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: July 20, 2010



\_\_\_\_\_  
HOWARD R. LLOYD  
United States Magistrate Judge

1 **EXHIBIT**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the Stipulation regarding source code that  
6 was issued by the United States District Court for the Northern District of California on  
7 \_\_\_\_\_ [date] in the case of VASUDEVAN SOFTWARE, INC., v. INTERNATIONAL  
8 BUSINESS MACHINES CORPORATION and ORACLE CORPORATION, Case No. 5:09-CV-  
9 05897 (RS & HRL).

10 I agree to comply with and to be bound by all the terms of this Stipulation regarding source  
11 code and I understand and acknowledge that failure to so comply could expose me to sanctions  
12 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
13 manner any information or item that is subject to this Stipulation regarding source code to any  
14 person or entity except in strict compliance with the provisions of this Stipulation.

15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Northern District of California for the purpose of enforcing the terms of this Stipulation regarding  
17 source code, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number]  
20 as my California agent for service of process in connection with this action or any proceedings  
21 related to enforcement of this Stipulation regarding source code.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26 [printed name]

27 Signature: \_\_\_\_\_

28 [signature]