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

19 ORACLE AMERICA, INC.	Case No. 3:10-cv-03561-WHA
20 Plaintiff,	Honorable Judge William H. Alsup
21 v.	**GOOGLE INC.'S ANSWER TO**
22 GOOGLE INC.	**PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT**
23 Defendant.	**INFRINGEMENT AND COUNTERCLAIMS**
24	
25	**JURY TRIAL DEMANDED**
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GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR

PATENT AND COPYRIGHT INFRINGEMENT AND COUNTERCLAIMS

Defendant Google Inc. ("Google") answers the Complaint of Oracle America, Inc. ("Oracle") as follows:

The Parties

1.   Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2.   Google admits that it is a corporation organized under the laws of the State of Delaware with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google admits that it does business in the Northern District of California. Google denies any remaining allegations of paragraph 2.

Jurisdiction and Venue

3.   Google admits that this action purports to invoke the patent and copyright laws of the United States, Titles 35 and 17, United States Code. Google admits that 28 U.S.C. §§ 1331 and 1338(a) confer jurisdiction as to claims arising under the patent laws and claims arising under the laws of the United States upon this Court. Google denies any remaining allegations of paragraph 3.

4.   Google admits that venue is proper in the Northern District of California. Google denies any remaining allegations of paragraph 4.

5.   Google admits that this Court has personal jurisdiction over it. Google admits that it has conducted and does conduct business within the State of California and within the Northern District of California. Google denies any remaining allegations of paragraph 5.

6.   Google admits that it, directly or through intermediaries, makes, distributes, offers for sale or license, sells or licenses, and/or advertises its products and services in the United States, in the State of California, and the Northern District of California. Google denies any remaining allegations of paragraph 6.

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Intradistrict Assignment

7.   Google admits the allegations of paragraph 7.

Background

8.   Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9.   Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10.   Google admits that what appear to be copies of U.S. patents numbers 6,125,447, 6,192,476, 5,966,702, 7,426,720, RE38,104, 6,910,205 and 6,061,520 are attached to Oracle's complaint as exhibits A through G. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10, and therefore denies them.

11.   Google admits that what appear to be copies of certificates of registration numbers TX 6-196-514, TX 6-066-538 and TX 6-143-306 issued by the U.S. Copyright Office are attached to Oracle's complaint as exhibit H. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11, and therefore denies them.

12.   Google admits that the Android Platform is an open-source software stack for mobile devices that includes an operating system, middleware and applications, and that a feature of Android is the Dalvik virtual machine ("VM"), which executes files in the Dalvik Executable (.dex) format, and can run classes compiled by a Java language compiler that have been converted into the .dex format by the "dx" tool included with Android. Google admits that the Open Handset Alliance, a group of 78 technology and mobile companies, which includes Google, makes the information and source code for Android, including the Dalvik VM and the Android software development kit ("SDK"), openly and freely available for download at

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1   http://source.android.com and http://developer.android.com.   Google denies any remaining

2   allegations of paragraph 12.

3   13.   Google denies the allegations of paragraph 13, and specifically denies that Google

4   has infringed or is liable for infringement of any valid and enforceable claim of the patents

5   identified in paragraph 13.

6   14.   Google denies the allegations of paragraph 14.

7   15.   Google denies the allegations of paragraph 15, and specifically denies Google has

8   infringed or is liable for infringement of any valid and enforceable claim of any patents asserted

9   in this action by Oracle.

10   **Count I**

11   **(Alleged Infringement of the '447 Patent)**

12   16.   Google incorporates by reference its responses to the allegations of paragraphs 1

13   though 15 above as its response to paragraph 16 of Oracle's complaint.

14   17.   Google admits that U.S. Patent No. 6,125,447 ("the '447 patent"), on its face, is

15   entitled "Protection Domains To Provide Security In A Computer System" and bears an issuance

16   date of September 26, 2000. Google further admits that what appears to be a copy of the '447

17   patent was attached to Oracle's complaint as Exhibit A. Google is without knowledge or

18   information sufficient to form a belief as to the truth of any remaining allegations of paragraph

19   17, and therefore denies them.

20   18.   Google denies the allegations of paragraph 18, and specifically denies that Google

21   has infringed or is liable for infringement of any valid and enforceable claim of the '447 patent.

22   **Count II**

23   **(Alleged Infringement of the '476 Patent)**

24   19.   Google incorporates by reference its responses to the allegations of paragraphs 1

25   though 15 above as its response to paragraph 19 of Oracle's complaint.

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GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT
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20.   Google admits that U.S. Patent No. 6,192,476 ("the '476 patent"), on its face, is entitled "Controlling Access To A Resource."   Google denies that the '476 patent bears an issuance date of February 20, 2000, and states that the '476 patent bears an issuance date of February 20, 2001. Google further admits that what appears to be a copy of the '476 patent was attached to Oracle's complaint as Exhibit B.   Google is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 20, and therefore denies them.

21.   Google denies the allegations of paragraph 21, and specifically denies that Google has infringed or is liable for infringement of any valid and enforceable claim of the '476 patent.

Count III

(Alleged Infringement of the '702 Patent)

22.   Google incorporates by reference its responses to the allegations of paragraphs 1 though 15 above as its response to paragraph 22 of Oracle's complaint.

23.   Google admits that U.S. Patent No. 5,966,702 ("the '702 patent"), on its face, is entitled "Method And Apparatus For Preprocessing And Packaging Class Files" and bears an issuance date of October 12, 1999. Google further admits that what appears to be a copy of the '702 patent was attached to Oracle's complaint as Exhibit C. Google is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 23, and therefore denies them.

24.   Google denies the allegations of paragraph 24, and specifically denies that Google has infringed or is liable for infringement of any valid and enforceable claim of the '702 patent.

Count IV

(Alleged Infringement of the '720 Patent)

25.   Google incorporates by reference its responses to the allegations of paragraphs 1 though 15 above as its response to paragraph 25 of Oracle's complaint.

GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT
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26. Google admits that U.S. Patent No. 7,426,720 ("the '720 patent"), on its face, is entitled "System And Method For Dynamic Preloading Of Classes Through Memory Space Cloning Of A Master Runtime Process" and bears an issuance date of September 16, 2008. Google further admits that what appears to be a copy of the '720 patent was attached to Oracle's complaint as Exhibit D. Google is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 26, and therefore denies them.

27. Google denies the allegations of paragraph 27, and specifically denies that Google has infringed or is liable for infringement of any valid and enforceable claim of the '720 patent.

Count V

(Alleged Infringement of the '104 Reissue Patent)

28. Google incorporates by reference its responses to the allegations of paragraphs 1 though 15 above as its response to paragraph 28 of Oracle's complaint.

29. Google denies that U.S. Patent No. RE38,104 ("the '104 reissue patent") is entitled "Method And Apparatus For Resolving Data References In Generate Code." Google admits that the '104 reissue patent, on its face, is entitled "Method And Apparatus For Resolving Data References In Generated Code" and bears an issuance date of April 29, 2003. Google further admits that what appears to be a copy of the '104 reissue patent was attached to Oracle's complaint as Exhibit E. Google is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 29, and therefore denies them.

30. Google denies the allegations of paragraph 30, and specifically denies that Google has infringed or is liable for infringement of any valid and enforceable claim of the '104 reissue patent.

Count VI

(Alleged Infringement of the '205 Patent)

31. Google incorporates by reference its responses to the allegations of paragraphs 1 though 15 above as its response to paragraph 31 of Oracle's complaint.

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1   32.   Google admits that U.S. Patent No. 6,910,205 ("the '205 patent"), on its face, is

2 entitled "Interpreting Functions Utilizing A Hybrid Of Virtual And Native Machine Instructions"

3 and bears an issuance date of June 21, 2005. Google further admits that what appears to be a

4 copy of the '205 patent was attached to Oracle's complaint as Exhibit F. Google is without

5 knowledge or information sufficient to form a belief as to the truth of any remaining allegations

6 of paragraph 32, and therefore denies them.

7   33.   Google denies the allegations of paragraph 33, and specifically denies that Google

8 has infringed or is liable for infringement of any valid and enforceable claim of the '205 patent.

9 ### Count VII

10 ### (Alleged Infringement of the '520 Patent)

11   34.   Google incorporates by reference its responses to the allegations of paragraphs 1

12 though 15 above as its response to paragraph 34 of Oracle's complaint.

13   35.   Google admits that U.S. Patent No. 6,061,520 ("the '520 patent"), on its face, is

14 entitled "Method And System For Performing Static Initialization" and bears an issuance date of

15 May 9, 2000. Google further admits that what appears to be a copy of the '520 patent was

16 attached to Oracle's complaint as Exhibit G. Google is without knowledge or information

17 sufficient to form a belief as to the truth of any remaining allegations of paragraph 35, and

18 therefore denies them.

19   36.   Google denies the allegations of paragraph 36, and specifically denies that Google

20 has infringed or is liable for infringement of any valid and enforceable claim of the '520 patent.

21 ### Count VIII

22 ### (Alleged Copyright Infringement)

23   37-46. Google has filed, concurrently herewith, a motion under Rule 12(b)(6) to dismiss

24 Count VIII of Oracle's complaint for failure to state a claim upon which relief can be granted

25 and, in the alternative, for a more definite statement. In accordance with Rule 12(a)(4) of the

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GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT
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1 Federal Rules, Google is not required to respond to Count VIII until after disposition of the

2 motion to dismiss and motion for more definite statement.

3 ### Prayer For Relief

4 These paragraphs set forth the statement of relief requested by Oracle to which no

5 response is required. Google denies that Oracle is entitled to any of the requested relief and

6 denies any allegations contained in the Prayer For Relief to which a response is required.

7 Google denies each and every allegation of Oracle's complaint not specifically admitted

8 or otherwise responded to above. Google specifically denies that Google has infringed or is

9 liable for infringement of any valid and enforceable patents of Oracle. Google further

10 specifically denies that Oracle is entitled to any relief whatsoever of any kind against Google as a

11 result of any act of Google or any person or entity acting on behalf of Google.

12 ### Defenses

13 ### First Defense – No Patent Infringement

14 1. Google does not infringe, has not infringed (directly, contributorily, or by

15 inducement) and is not liable for infringement of any valid and enforceable claim of U.S.

16 Reissue Patent No. RE38,104 ("the '104 reissue patent"), and U.S. Patent Nos. 5,966,702 ("the

17 '702 patent"), 6,061,520 ("the '520 patent"), 6,125,447 ("the '447 patent"), 6,192,476 ("the '476

18 patent"), 6,910,205 ("the '205 patent"), and 7,426,720 ("the '720 patent") (collectively "the

19 Patents-in-Suit").

20 ### Second Defense – Patent Invalidity

21 2. The claims of the Patents-in-Suit are invalid for failure to satisfy one or more of

22 the requirements of Sections 100 *et seq.*, 101, 102, 103, 112, 251, and/or 252 of Title 35 of the

23 United States Code.

24 ### Third Defense – Patent Unenforceability

25 3. The claims of the Patents-in-Suit are unenforceable, in whole or in part, by the

26 doctrines of laches, waiver and/or estoppel, including prosecution history estoppel.

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Fourth Defense – Substantial Non-Infringing Uses

2   4.   Any and all products or actions accused of infringement have substantial uses that

3 do not infringe and do not induce or contribute to the alleged infringement of the asserted claims

4 of the Patents-in-Suit.

5

Fifth Defense – Dedication To The Public

6   5.   The owner of the Patents-in-Suit has dedicated to the public all methods,

7 apparatus, and products disclosed in the Patents-in-Suit, but not literally claimed therein, and is

8 estopped from claiming infringement by any such public domain methods, apparatus, or

9 products.

10

Sixth Defense – Limitation On Patent Damages

11   6.   Oracle's claim for damages, if any, against Google for alleged infringement of the

12 Patents-in-Suit are limited by 35 U.S.C. §§ 286, 287 and 288.

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Seventh Defense – Misuse

14   7.   Oracle's claims against Google for alleged infringement of the Patents-in-Suit are

15 barred by the doctrine of misuse.

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Eighth Defense – Exceptional Case

17   8.   This is an exceptional case under 35 U.S.C. § 285, and accordingly, Google is

18 entitled to its attorneys' fees incurred in defending against Counts I through VII of Oracle's

19 complaint.

20

Ninth Defense – Use By The United States

21   9.   To the extent that the alleged invention has been used or manufactured by or for

22 the United States, the claims for relief are barred by 28 U.S.C. § 1498.

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Tenth Defense – No Injunctive Relief

24   10.   Oracle is not entitled to injunctive relief as it, at a minimum, has not suffered any

25 alleged irreparable injury and has an adequate remedy at law.

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GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT
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Eleventh Defense – License

11.   Upon information and belief, users of the Android Platform, including, without limitation, manufacturers and software developers, are licensed to use the Patents-in-Suit.

Twelfth Defense – Implied License

12.   Oracle's claims of patent infringement are barred because Google has an implied license to the Patents-in-Suit.

Thirteenth Defense – Unclean Hands

13.   All of Oracle's claims are barred because Oracle has come to this Court with unclean hands.

COUNTERCLAIMS

The Parties

1.   Google Inc. ("Google") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

2.   Upon information and belief, Oracle America, Inc. ("Oracle") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Oracle Parkway, Redwood City, California 94065. Upon information and belief, Oracle is a wholly-owned subsidiary of Oracle Corporation ("Oracle Corp."), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 500 Oracle Parkway, Redwood City, California 94065.

Jurisdiction and Venue

3.   Subject to Google's defenses and denials, Google alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202, and venue for these Counterclaims is proper in this district.

4.   This Court has personal jurisdiction over Oracle.

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Factual Background

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A.   The Java Platform and Programming Language

3   1.   Upon information and belief, the Java programming language and the Java

4 platform – a software platform that includes a runtime environment that enables programs

5 written in the Java programming language to execute – were developed by Sun Microsystems,

6 Inc. ("Sun") in the mid-1990s. While they are distinct elements, the term "Java" is commonly

7 used to refer to the programming language, the runtime environment, as well as the platform.

8   2.   The Java programming language was designed to use a similar syntax as well-

9 known, existing object-oriented languages at the time, such as C++. Instead of compiling

10 programs into machine-executable code that could only be run on a particular computer system,

11 the Java platform implemented a well-known technique wherein programs written in the Java

12 programming language were compiled into intermediate instructions called "bytecode" that

13 could only be executed on a computer that implements a Java "virtual machine." The virtual

14 machine, typically a program, receives the bytecode and can convert it into instructions

15 appropriate for the particular computer upon which the virtual machine was running, and then

16 execute those instructions on that computer. So long as there is a Java virtual machine available

17 for a given computer system, any program compiled from the Java programming language into

18 Java bytecode could theoretically run on the Java virtual machine for that computer. Sun's Java

19 virtual machines implement a stack-oriented architecture, where data and parameters are loaded

20 onto data structures in the computer's memory called "stacks," and instructions are then executed

21 using the data and parameters from the stack.

22   3.   Upon information and belief, the Java platform comprises many different

23 components, including utilities to assist with the development of source code written in the Java

24 programming language, a Java compiler that converts Java programming language statements to

25 Java bytecode, a Java runtime environment consisting of Java virtual machines written to operate

26 on a number of different computer platforms and a set of standard class libraries that can be

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1   accessed and reused by Java platform applications to perform common software functions, such

2   as writing to files or sorting data.

3   4.   Upon information and belief, Sun developed and distributed the Java Standard

4   Edition ("Java SE"), along with other editions of the Java platform. Each of these editions of the

5   Java platform contain a development environment, a Java compiler, Java virtual machine, a set

6   of standard class libraries, and documentation files describing the functionality and operation of

7   the specific Java platform edition. Though there are many similarities between each of these

8   editions, one of the significant differences is that each edition provides a different set of standard

9   class libraries based on the types of applications and environment at which each edition is

10 targeted.

11   5.   Upon information and belief, in response to the urging of open-source advocates

12 and in the hopes of increasing the number of Java users, Sun officially announced that Java

13 would become open-source. In 2006 and 2007, Sun released some but not all of the source code

14 for Java SE (as well as the other editions of the Java Platform) under the terms of the GNU

15 Public License, version 2 ("GPLv2") open source license. This open-source aspect of Java

16 contributed to its widespread acceptance among software developers.

17   6.   Upon information and belief, Sun also released the specifications for Sun's Java

18 platform, including Sun's Java virtual machine, under a free-of-charge license that can be found

19 at http://java.sun.com/docs/books/jls/third_edition/html/jcopyright.html and

20 http://java.sun.com/docs/books/jvms/second_edition/html/Copyright.doc.html, respectively. The

21 license allows developers to create "clean room" implementations of Sun's Java specifications.

22 If those implementations demonstrate compatibility with the Java specification, then Sun would

23 provide a license for any of its intellectual property needed to practice the specification,

24 including patent rights and copyrights. One example of a "clean room" implementation of Sun's

25 Java is Apache Harmony, developed by the Apache Software Foundation. The only way to

26 demonstrate compatibility with the Java specification is by meeting all of the requirements of

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1   Sun's Technology Compatibility Kit ("TCK") for a particular edition of Sun's Java.

2   Importantly, however, TCKs were only available from Sun, initially not available as open

3   source, were provided solely at Sun's discretion, and included several restrictions, such as

4   additional licensing terms and fees. In essence, although developers were free to develop a

5   competing Java virtual machine, they could not openly obtain an important component needed to

6   freely benefit from Sun's purported open-sourcing of Java.

7   7.   Sun came under significant criticism from members of the open source

8   community, including Oracle Corp., for its refusal to fully open source Java. For example, in

9   August of 2006, the Apache Software Foundation ("ASF"), a not-for-profit corporation that

10 provides organizational, legal, and financial support for open source software projects, attempted

11 to obtain a TCK from Sun to verify Apache Harmony's compatibility with Java. Although Sun

12 eventually offered to open source the TCK for Java SE, Sun included field of use ("FOU")

13 restrictions that limited the circumstances under which Apache Harmony users could use the

14 software that the ASF created, such as preventing the TCK from being executed on mobile

15 devices. In April of 2007, the ASF wrote an open letter to Sun asking for either a TCK license

16 without FOU restrictions, or an explanation as to why Sun was "protect[ing] portions of Sun's

17 commercial Java business at the expense of ASF's open software" and violating "Sun's public

18 promise that any Sun-led specification [such as Java] would be fully implementable and

19 distributable as open source/free software." However, Sun continued to refuse the ASF's

20 requests.

21   8.   Oracle Corp., as a member of the Executive Committee ("EC") of the Java

22 Community Process ("JCP"), the organization tasked with managing Java standards, voiced the

23 same concerns regarding Sun's refusal to fully open source the Java platform. Later that year, in

24 December of 2007, during a JCP EC meeting, Oracle Corp. proposed that the JCP should provide

25 "a new, simplified IPR [intellectual property rights] Policy that permits the broadest number of

26 implementations." At that same meeting, BEA Systems – which at the time was in negotiations

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1   that resulted in Oracle Corp. purchasing BEA – proposed a resolution that TCK licenses would

2   be "offered without field of use restrictions . . . enabling the TCK to be used by organizations

3   including Apache." Oracle Corp. voted in favor of the resolution.

4   9.   Just over a year later, in February of 2009, Oracle Corp. reiterated its position on

5   the open-source community's expectation of a fully open Java platform when it supported a

6   motion that "TCK licenses must not be used to discriminate against or restrict compatible

7   implementations of Java specifications by including field of use restrictions on the tested

8   implementations or otherwise. Licenses containing such limitations do not meet the

9   requirements of the JSPA, the agreement under which the JCP operates, and violate the

10 expectations of the Java community that JCP specs can be openly implemented."

11   10.   Only a couple of months later, in April of 2009, Oracle Corp. announced that it

12 would be acquiring Sun (renamed Oracle America after the acquisition was completed in January

13 of 2010). Since that time, and directly contrary to Oracle Corp.'s public actions and statements,

14 as well as its own proposals as an executive member of the JCP, Oracle Corp. and Sun (now

15 Oracle America) have ignored the open source community's requests to fully open-source the

16 Java platform.

17 **B.   The Open Handset Alliance and Development of the Android Platform**

18   11.   The Android Platform ("Android") is a freely-distributed, open-source software

19 stack for mobile devices that includes an operating system, middleware and key mobile

20 applications. Android was released in 2007 by a group of seventy-eight technology and mobile

21 companies known as the Open Handset Alliance ("OHA") who have come together to accelerate

22 innovation in mobile devices and offer consumers a richer, less expensive, and better mobile

23 experience. The members of the OHA, which include Google, mobile operators, handset

24 manufacturers, semiconductor companies, software companies and commercialization

25 companies, are each strongly committed to greater openness in the mobile ecosystem.

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12.   The OHA believes that an open platform – a platform that provides equal access to any who would choose to develop software for the platform – is essential to allow wireless carriers, handset manufacturers, software developers and others to more rapidly bring innovative ideas to the marketplace and to better respond to consumers' demands. An open platform also ensures that there is no threat of a central point of failure, so that no single industry player can restrict or control the innovations of any other. The objective of Android is an open and shared product that each contributor can freely tailor and customize. The members of the OHA, including Google, have invested heavily in Android by contributing significant intellectual property as well as economic and engineering resources to the development and maintenance of Android.

13.   The Android platform includes, among other things, the Android Software Development Kit ("SDK") and the Dalvik Virtual Machine ("VM"). The Dalvik VM relies on a version of the Linux kernel for core system services such as security, memory management, process management, network stack, and driver model, and as an abstraction layer between the hardware and the rest of the software stack. The core class libraries of the Dalvik VM incorporate a subset of Apache Harmony, a clean room, open source implementation of Java from the Apache Software Foundation. Other than the Harmony libraries, the Android platform, including, without limitation, the Dalvik VM, was independently developed by the OHA.

14.   The Android Open Source Project ("AOSP") is tasked with the maintenance and further development of Android, including incorporating code and submissions from the community of developers who contribute to Android and the tens of thousands of developers who create applications for Android. The goal of the Android Open Source Project (AOSP) is to ensure that the open-source Android software is implemented as widely and consistently as possible, to the benefit of the developer and user communities, and others involved in Android. Google, along with several corporate partners and volunteer technology enthusiasts, contributes resources, including engineers and financial support, to the AOSP.

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1   15.   The information and source code for the Android Platform is openly and freely

2 available for developers, manufacturers, or any member of the general public to download at

3 http://source.android.com and http://developer.android.com. The majority of the Android

4 software is made available under the permissive open source license terms of the Apache

5 Software License, 2.0 ("Apache 2.0"). Certain aspects of Android, for example, the Linux kernel

6 patches, are made available under the GPLv2 license.

7   16.   Developers are free to modify the source code of the Android platform to fit their

8 particular purpose. Android's permissive open-source license allows a developer to adopt the

9 Android platform and freely build software and enhancements on top of the platform, while

10 maintaining the flexibility to release the software and enhancements to the public under either an

11 open source license, or alternatively under a commercial license, which would protect the

12 developer's proprietary investment in Android.

13   17.   Google does not receive any payment, fee, royalty, or other remuneration for its

14 contributions to the Android Platform.

15 **C.   Android and the Java Programming Language**

16   18.   Developers for Android can create software applications for Android-based

17 mobile devices using various programming languages, including the Java programming

18 language. For use on the Android platform, these software applications are converted into a set

19 of intermediate instructions – i.e., Dalvik "bytecode," typically stored in files in the Dalvik

20 Executable (.dex) format – with the "dx" tool included with the Android platform. These .dex

21 files can be executed on any mobile device with a Dalvik VM. The Dalvik VM implements a

22 register-based architecture (distinct from a stack-oriented architecture), where data and

23 parameters are loaded directly into virtual machine registers. The Dalvik VM and .dex format

24 are optimized for battery-powered mobile devices that are more limited in terms of computing

25 and memory resources than desktop computers.

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19.   Although software applications for the Android platform may be written in the Java programming language, the Dalvik bytecode is distinct and different from Java bytecode. The Dalvik VM is not a Java VM.

20.   The Android Platform has been a success in the mobile handset industry. Although Android was a latecomer to the smartphone market – first becoming generally available in late 2008 – there are currently approximately ninety different Android-based mobile devices made by over twenty different manufacturers available for purchase in dozens of countries. Indeed, approximately 200,000 Android-based handsets are activated every day on over fifty different wireless carriers. Android Market – a store where developers can sell applications ("apps") that they create for Android-based devices – has over 80,000 apps available for download.

21.   Android's popularity has proven to be a catalyst for the Java open source community and the increased use of the Java programming language. Indeed, when Android was first released in November of 2007, Sun CEO Jonathan Schwartz confirmed this fact, congratulating Android and stating that "needless to say, Google and the Open Handset Alliance just strapped another set of rockets to the community's momentum – and to the vision defining opportunity across our (and other) planets."

22.   The success of the Android platform is due in large part to its open nature, which benefits the entire open source community of consumers, developers, manufacturers, and mobile operators. Android's permissive open source license allows developers and manufacturers to innovate rapidly under their own terms while simultaneously protecting their proprietary intellectual property, if so desired. Because Android provides open and comprehensive access to handset capabilities and developer tools, developers experience increased productivity and are better able to optimize their Android applications. Mobile operators and handset manufacturers benefit from the innovation, and have great flexibility to customize Android to differentiate their product lines. Handset manufacturers also benefit from lower software costs and faster time-to-

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1 market for handsets. Finally, and consistent with the mission of the Open Handset Alliance, all

2 of the benefits to developers, manufacturers, and mobile operators are passed on to consumers

3 who receive more innovative and cost-effective mobile devices and services, and a rich portfolio

4 of applications, that more rapidly respond to their needs and demands.

5 **E.   Oracle's Complaint**

6   23.   In its Complaint, Oracle asserts that Google, by way of the Android Platform and

7 certain of its components, infringes U.S. Reissue Patent No. RE38,104 ("the '104 reissue

8 patent"), and U.S. Patent Nos. 5,966,702 ("the '702 patent"), 6,061,520 ("the '520 patent"),

9 6,125,447 ("the '447 patent"), 6,192,476 ("the '476 patent"), 6,910,205 ("the '205 patent"), and

10 7,426,720 ("the '720 patent") (collectively "the Patents-in-Suit"). Oracle also asserts that

11 Google infringes and induces Android users and developers to infringe certain copyrights that

12 are attached to Oracle's Complaint as Exhibit H ("the Asserted Copyrights").

13   24.   Google does not infringe any valid and enforceable claim of the Patents-in-Suit,

14 either directly or indirectly.

15   25.   Consequently, there is an actual case and controversy between the parties over the

16 patents-in-suit.

17   **<u>COUNT ONE</u>**

18   **<u>Declaratory Judgment of Non-Infringement of U.S. Reissue Patent No. RE 38,104</u>**

19   26.   Google restates and incorporates by reference its allegations in paragraphs 1-25 of

20 its Counterclaims.

21   27.   An actual case or controversy exists between Google and Oracle as to whether the

22 '104 reissue patent is infringed by Google.

23   28.   A judicial declaration is necessary and appropriate so that Google may ascertain

24 its rights regarding the '104 reissue patent.

25   29.   Google has not infringed and does not infringe, directly or indirectly, any valid

26 and enforceable claim of the '104 reissue patent.

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30.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its Complaint with knowledge of the facts stated in this Counterclaim.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Reissue Patent No. RE 38,104

31.   Google restates and incorporates by reference its allegations in paragraphs 1–30 of its Counterclaims.

32.   An actual case or controversy exists between Google and Oracle as to whether the '104 reissue patent is invalid.

33.   A judicial declaration is necessary and appropriate so that Google may ascertain its rights as to whether the '104 reissue patent is invalid.

34.   The claims of the '104 reissue patent are invalid under one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, and 112.

35.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its Complaint with knowledge of the facts stated in this Counterclaim.

COUNT THREE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,966,702

36.   Google restates and incorporates by reference its allegations in paragraphs 1-35 of its Counterclaims.

37.   An actual case or controversy exists between Google and Oracle as to whether the '702 patent is infringed by Google.

38.   A judicial declaration is necessary and appropriate so that Google may ascertain its rights regarding the '702 patent.

39.   Google has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '702 patent.

40.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its Complaint with knowledge of the facts stated in this Counterclaim.

GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT INFRINGEMENT AND COUNTERCLAIMS
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COUNT FOUR

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Declaratory Judgment of Invalidity of U.S. Patent No. 5,966,702

3   41.   Google restates and incorporates by reference its allegations in paragraphs 1–40

4   of its Counterclaims.

5   42.   An actual case or controversy exists between Google and Oracle as to whether the

6   '702 patent is invalid.

7   43.   A judicial declaration is necessary and appropriate so that Google may ascertain

8   its rights as to whether the '702 patent is invalid.

9   44.   The claims of the '702 patent are invalid under one or more of 35 U.S.C. §§ 100

10 et seq., 101, 102, 103, and 112.

11   45.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

12 Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT FIVE

14

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,061,520

15   46.   Google restates and incorporates by reference its allegations in paragraphs 1-45 of

16 its Counterclaims.

17   47.   An actual case or controversy exists between Google and Oracle as to whether the

18 '520 patent is infringed by Google.

19   48.   A judicial declaration is necessary and appropriate so that Google may ascertain

20 its rights regarding the '520 patent.

21   49.   Google has not infringed and does not infringe, directly or indirectly, any valid

22 and enforceable claim of the '520 patent.

23   50.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

24 Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT SIX

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Declaratory Judgment of Invalidity of U.S. Patent No. 6,061,520

3   51.   Google restates and incorporates by reference its allegations in paragraphs 1–50

4   of its Counterclaims.

5   52.   An actual case or controversy exists between Google and Oracle as to whether the

6   '520 patent is invalid.

7   53.   A judicial declaration is necessary and appropriate so that Google may ascertain

8   its rights as to whether the '520 patent is invalid.

9   54.   The claims of the '520 patent are invalid under one or more of 35 U.S.C. §§ 100

10   et seq., 101, 102, 103, and 112.

11   55.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

12   Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT SEVEN

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Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,125,447

15   56.   Google restates and incorporates by reference its allegations in paragraphs 1-55 of

16   its Counterclaims.

17   57.   An actual case or controversy exists between Google and Oracle as to whether the

18   '447 patent is infringed by Google.

19   58.   A judicial declaration is necessary and appropriate so that Google may ascertain

20   its rights regarding the '447 patent.

21   59.   Google has not infringed and does not infringe, directly or indirectly, any valid

22   and enforceable claim of the '447 patent.

23   60.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

24   Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT EIGHT

Declaratory Judgment of Invalidity of U.S. Patent No. 6,125,447

61.   Google restates and incorporates by reference its allegations in paragraphs 1–60 of its Counterclaims.

62.   An actual case or controversy exists between Google and Oracle as to whether the '447 patent is invalid.

63.   A judicial declaration is necessary and appropriate so that Google may ascertain its rights as to whether the '447 patent is invalid.

64.   The claims of the '447 patent are invalid under one or more of 35 U.S.C. §§ 100 et seq., 101, 102, 103, and 112.

65.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its Complaint with knowledge of the facts stated in this Counterclaim.

COUNT NINE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,192,476

66.   Google restates and incorporates by reference its allegations in paragraphs 1-65 of its Counterclaims.

67.   An actual case or controversy exists between Google and Oracle as to whether the '476 patent is infringed by Google.

68.   A judicial declaration is necessary and appropriate so that Google may ascertain its rights regarding the '476 patent.

69.   Google has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '476 patent.

70.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT TEN

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Declaratory Judgment of Invalidity of U.S. Patent No. 6,192,476

3   71.   Google restates and incorporates by reference its allegations in paragraphs 1–70

4   of its Counterclaims.

5   72.   An actual case or controversy exists between Google and Oracle as to whether the

6   '476 patent is invalid.

7   73.   A judicial declaration is necessary and appropriate so that Google may ascertain

8   its rights as to whether the '476 patent is invalid.

9   74.   The claims of the '476 patent are invalid under one or more of 35 U.S.C. §§ 100

10   et seq., 101, 102, 103, and 112.

11   75.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

12   Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT ELEVEN

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Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,910,205

15   76.   Google restates and incorporates by reference its allegations in paragraphs 1-75 of

16   its Counterclaims.

17   77.   An actual case or controversy exists between Google and Oracle as to whether the

18   '205 patent is infringed by Google.

19   78.   A judicial declaration is necessary and appropriate so that Google may ascertain

20   its rights regarding the '205 patent.

21   79.   Google has not infringed and does not infringe, directly or indirectly, any valid

22   and enforceable claim of the '205 patent.

23   80.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

24   Complaint with knowledge of the facts stated in this Counterclaim.

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GOOGLE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT AND COPYRIGHT
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COUNT TWELVE

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Declaratory Judgment of Invalidity of U.S. Patent No. 6,910,205

3   81.   Google restates and incorporates by reference its allegations in paragraphs 1–80

4   of its Counterclaims.

5   82.   An actual case or controversy exists between Google and Oracle as to whether the

6   '205 patent is invalid.

7   83.   A judicial declaration is necessary and appropriate so that Google may ascertain

8   its rights as to whether the '205 patent is invalid.

9   84.   The claims of the '205 patent are invalid under one or more of 35 U.S.C. §§ 100

10   et seq., 101, 102, 103, and 112.

11   85.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

12   Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT THIRTEEN

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Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,426,720

15   86.   Google restates and incorporates by reference its allegations in paragraphs 1-85 of

16   its Counterclaims.

17   87.   An actual case or controversy exists between Google and Oracle as to whether the

18   '720 patent is infringed by Google.

19   88.   A judicial declaration is necessary and appropriate so that Google may ascertain

20   its rights regarding the '720 patent.

21   89.   Google has not infringed and does not infringe, directly or indirectly, any valid

22   and enforceable claim of the '720 patent.

23   90.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

24   Complaint with knowledge of the facts stated in this Counterclaim.

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COUNT FOURTEEN

Declaratory Judgment of Invalidity of U.S. Patent No. 7,426,720

3   91.   Google restates and incorporates by reference its allegations in paragraphs 1–90

4 of its Counterclaims.

5   92.   An actual case or controversy exists between Google and Oracle as to whether the

6 '720 patent is invalid.

7   93.   A judicial declaration is necessary and appropriate so that Google may ascertain

8 its rights as to whether the '720 patent is invalid.

9   94.   The claims of the '720 patent are invalid under one or more of 35 U.S.C. §§ 100

10 et seq., 101, 102, 103, and 112.

11   95.   This is an exceptional case under 35 U.S.C. § 285 because Oracle filed its

12 Complaint with knowledge of the facts stated in this Counterclaim.

13   #### Prayer for Relief

14   WHEREFORE, Google prays for judgment as follows:

15   a.   A judgment dismissing Oracle's Complaint against Google with prejudice;

16   b.   A judgment in favor of Google on all of its Counterclaims;

17   c.   A declaration that Google has not infringed, contributed to the infringement of, or

18   induced others to infringe, either directly or indirectly, any valid and enforceable

19   claims of the Patents-in-Suit;

20   d.   A declaration that the Patents-in-Suit are invalid;

21   e.   A declaration that Oracle's claims are barred by the doctrines of laches, equitable

22   estoppel, and/or waiver;

23   f.   A declaration that the Oracle's claims are barred by the doctrine of unclean hands;

24   g.   A declaration that this case is exceptional and an award to Google of its

25   reasonable costs and expenses of litigation, including attorneys' fees and expert

26   witness fees; and

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1   h.   Such other and further relief as this Court may deem just and proper.

2   **Jury Demand**

3   Oracle's demand that all issues be determined by a jury trial does not state any allegation,

4 and Google is not required to respond. To the extent that any allegations are included in the

5 demand, Google denies these allegations.

6 DATED: October 4, 2010   **KING & SPALDING LLP**

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8   By: /s/ Donald F. Zimmer, Jr.

9

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DEMAND FOR JURY TRIAL

2   In accordance with Rule 38 of the Federal Rules of Civil Procedure and Civil L.R. 3-6(a),

3   Google Inc. respectfully demands a jury trial of all issues triable to a jury in this action.

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6   DATED: October 4, 2010   **KING & SPALDING LLP**

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8   By: /s/ Donald F. Zimmer, Jr.
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