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

18 ORACLE AMERICA, INC.

19 Plaintiff,

20 v.

21 GOOGLE INC.

22 Defendant.
23

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

Honorable Judge William H. Alsup

**GOOGLE INC.’S MOTION TO DISMISS
COUNT VIII OF PLAINTIFF’S
COMPLAINT OR, IN THE
ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT**

Hearing Date: November 18, 2010

Hearing Time: 8:00 A.M.

Location: Courtroom 9, 19th Floor

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NOTICE OF MOTION AND MOTION

1
2 TO NONPARTIES AND PLAINTIFF ORACLE AMERICA, INC. AND ALL
3 ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that the following motion will be heard
4 at 8:00 A.M. on November 18, 2010, or as soon thereafter as counsel may be heard, in
5 Courtroom 9, 19th Floor of this Court, located at 450 Golden Gate Avenue, San Francisco,
6 California before the Honorable William Alsup.

7 Defendant Google Inc. (“Google”) will and hereby does move this Court for an order
8 dismissing Count VIII of plaintiff’s “Complaint For Patent And Copyright Infringement” under
9 Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the claim for copyright
10 infringement asserted in Count VIII fails to state a claim upon which relief can be granted. In
11 the alternative, Google will and hereby does move this Court, in accordance with Rule 12(e) of
12 the Federal Rules, for a more definite statement of the claim asserted in Count VIII. In support
13 of this motion, Google respectfully shows that the claim for copyright infringement asserted in
14 Count VIII of the Complaint is legally deficient. Count VIII does not identify any specific
15 infringing work that is the subject of the alleged copyright infringement claim, does not identify
16 with any specificity the manner in which Google allegedly infringed any copyrights of plaintiff
17 Oracle America, Inc. (“Oracle”), and does not identify with any specificity the basis for any
18 claim of vicarious infringement, inducement of infringement, or contributory infringement. As a
19 result, Count VIII fails to state a claim for relief upon which relief can be granted. In the event
20 that Count VIII is not dismissed, Google requests in the alternative that the Court enter an order
21 requiring Oracle to provide a more definite statement of its claim of copyright infringement that
22 provides sufficient detail so that Google may reasonably prepare a response to Oracle’s claim.
23 This motion is based on this Notice of Motion and Motion, the following Memorandum of Points
24 and Authorities, the pleadings and papers on file in this action, any matters of which the Court
25 may take judicial notice, any evidence or argument presented at the hearing on the motion, and
26 any other matters the Court deems proper.
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 On August 12, 2010, Plaintiff Oracle America, Inc. (“Oracle”) filed its Complaint For
4 Patent And Copyright Infringement (Docket No. 1) (“Complaint”) against Google. The
5 Complaint is directed at Android, a publicly-available, open-source software platform that
6 anyone, anywhere, may freely use. Android was and continues to be developed by Google with
7 substantial contributions from others, both volunteer technology enthusiasts and corporate
8 partners. Since its release in 2007, handset manufacturers and software developers have rapidly
9 adopted Android – which is designed specifically for operation on devices with limited
10 computing resources, such as mobile phones – as their platform of choice for next-generation
11 mobile devices.

12 Count VIII of Oracle’s Complaint seeks to assert a claim of copyright infringement
13 against some unidentified portion of the Android “platform,” which includes a variety of
14 different types of materials, including software code, computer programs, specifications,
15 reference materials and developer tools and resources. Count VIII, however, is so vague and
16 general that it is impossible for Google to determine from the Complaint:

- 17 • which portion or portions of the Android “platform” are the subject of the
18 copyright infringement claim;
- 19 • how Google allegedly infringed the copyrights in the two works identified in
20 paragraph 11 and Exhibit H of Oracle’s Complaint (the “Asserted Copyrights”);
- 21 • how any “users” of the Android platform may have allegedly infringed the
22 Asserted Copyrights; or
- 23 • how Google allegedly “encouraged, induced, caused, [or] materially contributed
24 to” any acts of copyright infringement by any such other parties.

25 As a result of these deficiencies, Oracle’s claim of copyright infringement fails to meet the
26 pleading standards applicable to a claim of copyright infringement.

1 The deficiencies in Oracle’s copyright infringement claim are both striking and telling in
2 view of the fact that Android is an open-source platform, and that all of the relevant source code
3 and documentation for Android is currently – and has for some time been – publicly available.
4 Oracle’s inadequately-pleaded accusations are striking because Oracle has had complete access
5 to every piece of information that is relevant to any possible assertion of copyright infringement,
6 yet Oracle still failed to meet even the minimum pleading standards. Oracle’s inadequately-
7 pleaded accusations are also telling because, notwithstanding Oracle’s access to the allegedly
8 infringing work, Oracle has not articulated a legally sufficient claim that puts Google on notice
9 of either the factual basis or the substance of Oracle’s copyright claim.

10 **II. Argument**

11 **A. Factual Background**

12 Because this dispute has not previously been before this Court, Google submits the
13 following brief discussion of Android. Google believes that an explanation of the Android
14 platform and the relationship among certain of its major components is essential to the
15 understanding of the factual landscape underlying Oracle’s Complaint and, accordingly, this
16 Motion. Google submits that all of the facts stated herein are of public record, and are all matters
17 of which the Court may take judicial notice if necessary. Google acknowledges, however, that
18 the Motion is directed to the sufficiency of Plaintiff’s Complaint, and the sufficiency of the
19 pleading must be determined by the pleading itself.

20 1. The Android Platform

21 In November of 2007, Google and thirty-four other companies with an interest in the
22 mobile device market formed the Open Handset Alliance (“OHA”).¹ The mission of the OHA –
23 now made up of seventy-eight companies – is to provide a better experience for the world’s
24 three-billion mobile phone users by developing and promoting the first open, complete, and free
25

26 ¹ See Android Timeline, <http://www.android.com/timeline.html>.

1 platform created specifically for mobile devices.² The Android Platform – the cornerstone of the
 2 OHA’s mission – was released the same month.³ As part of Android’s first release, most of the
 3 software code that makes up the Android Platform was released to the public under a permissive
 4 open-source license known as the “Apache Software License 2.0.”⁴ Approximately one year
 5 later, in September of 2008, the first full version of Android was released to the public.⁵ One
 6 month after the first full release, in October of 2008, the remainder of the Android source code
 7 was released to the public under the same Apache license.⁶

8 Android has undergone development by the OHA (including Google) and individual
 9 developers since its release.⁷ The most recent release of the Android platform – Version 2.2,
 10 Android’s eighth release – includes more than 11 million lines of computer code that supports
 11 the operation of thousands of components.⁸ The key components of the Android Platform
 12 include:

- 13 • the Software Development Kit (“SDK”) that contains software tools and
 14 thousands of pages of documentation that assist developers in creating
 15 applications (commonly referred to as “apps”) that run on Android;
- 16 • the “kernel” that controls the basic aspects of the mobile device, such as security
 17 and memory management;

21 ² See Open Handset Alliance, <http://www.openhandsetalliance.com/index.html>, Alliance
 22 Overview, http://www.openhandsetalliance.com/oha_overview.html.

23 ³ See *id.*; Android Timeline, <http://www.android.com/timeline.html>.

24 ⁴ See Licenses – Android Open Source, <http://source.android.com/source/licenses.html>.

25 ⁵ See Android Timeline, <http://www.android.com/timeline.html>.

26 ⁶ See *id.*

27 ⁷ See Philosophy and Goals – Android Open Source,
 28 <http://source.android.com/about/philosophy.html>.

⁸ See Android SDK, <http://developer.android.com/sdk/index.html>; Android 2.2 Platform,
<http://developer.android.com/sdk/android-2.2.html>.

- 1 • “libraries” that provide many basic programming functions, including for example
2 reading and writing files, using the World Wide Web, and playing audio and
3 video files;
- 4 • an “application framework” that consists of libraries that provide Android-
5 specific programming functions, such as displaying Android menus and dialogs
6 and using phone-specific hardware such as the dialer, global positioning system,
7 and microphone;
- 8 • “applications” that provide the functionality that users see, such as the home
9 screen, the phone dialer, and other utility functions; and
- 10 • the “Android Runtime,” which provides services to applications, such as
11 executing Dalvik bytecodes, managing user notifications, and being informed of
12 events such as position changes, hardware status changes, and incoming
13 messages.⁹

14 All of the source code and documentation needed to implement these core features of Android is
15 publicly available for download on the Android website.¹⁰

16 2. The Dalvik Virtual Machine

17 One aspect of the Android Platform referenced in Oracle’s Complaint – but not
18 specifically accused in Oracle’s copyright infringement claims – is the Dalvik virtual machine
19 (the “Dalvik VM”). Compl. at ¶ 12. A “virtual machine,” in a general sense, is a software
20 system that receives instructions, usually in the form of software code that has been compiled
21 into an intermediate form, and outputs a different set of instructions that are understood by the
22

23 ⁹ See What is Android?, <http://developer.android.com/guide/basics/what-is-android.html>;
24 <http://developer.android.com/guide/developing/tools/index.html>.

25 ¹⁰ See Android Developers, <http://developer.android.com/index.html>. The overwhelming
26 majority of the Android software source code and its supporting documentation is publicly
27 available. The exceptions, such as low-level hardware drivers which are proprietary to hardware
28 makers, and proprietary third party (and Google) business applications – none of which are
mentioned in Oracle’s Complaint – are peripheral to the core Android platform.

1 device on which the virtual machine is running.¹¹ This is a common technique in computer
 2 science, used by many programming systems.¹² Some famous examples include p-code,
 3 Python, and the Java platform, all of which include a programming language, a set of libraries
 4 and a virtual machine.¹³

5 There are several ways to create and execute Android software applications. For
 6 example, developers can create software for Android-based mobile devices in the C or C++
 7 programming languages that run directly on the Linux kernel, bypassing the Dalvik VM
 8 entirely.¹⁴ Alternatively, developers can create software applications for Android-based mobile
 9 devices in other programming languages, such as the Java, Ruby or Scala programming
 10 languages that run on the Dalvik VM.¹⁵ In this instance, these software applications are
 11 converted into a set of intermediate instructions – i.e., Dalvik “bytecode” or files in the Dalvik
 12 Executable (.dex) format – through the use of the “dx” tool included with the Android
 13 platform.¹⁶ These .dex files can be executed on any mobile device with a Dalvik VM.¹⁷

16 ¹¹ See About the Java Technology,
 17 <http://download.oracle.com/javase/tutorial/getStarted/intro/definition.html> (describing the
 18 process of creating Java bytecode and translating the Java bytecode into machine instructions
 19 using the Java virtual machine); Parrot – The Parrot Primer,
 20 <http://docs.parrot.org/parrot/latest/html/docs/intro.pod.html> (describing basic virtual machine
 21 functionality).

22 ¹² See The Java Virtual Machine Specification (2d ed. 1999), at
 23 http://java.sun.com/docs/books/jvms/second_edition/html/Introduction.doc.html (“It is
 24 reasonably common to implement a programming language using a virtual machine; the best-
 25 known virtual machine may be the P-Code machine of UCSD Pascal.”).

26 ¹³ See *id.*, Glossary – Python v3.1.2 documentation,
 27 <http://docs.python.org/py3k/glossary.html#term-bytecode>.

28 ¹⁴ See <http://developer.android.com/sdk/ndk/index.html#overview> (describing the use of
 native code on Android).

¹⁵ See What is Android?, <http://developer.android.com/guide/basics/what-is-android.html>;
<http://code.google.com/p/android-ruby>; [http://www.assembla.com/wiki/show/scala-
 ide/Developing_for_Android](http://www.assembla.com/wiki/show/scala-ide/Developing_for_Android).

¹⁶ See *id.*

¹⁷ See *id.*

1 The Dalvik VM is a custom-built system that has been optimized for running programs
2 on battery-powered mobile devices that are more limited than desktop computers in terms of
3 computing and memory resources.¹⁸ The Dalvik VM relies on the open-source Linux kernel for
4 underlying functionality such as threading and low-level memory management.¹⁹ The Dalvik
5 VM was independently developed by Google and the OHA.

6 The class libraries of the Dalvik VM incorporate a subset of Apache Harmony, a clean-
7 room, open source implementation of Java developed by the Apache Software Foundation and
8 released under the same permissive Apache license under which the OHA has released most of
9 Android.²⁰

10 3. Oracle's Copyright Claim

11 Oracle alleges in the Complaint that it purchased Sun Microsystems ("Sun") in January
12 of 2010 and at that time became the owner of Sun's patents and copyrights in the Java
13 "platform." Compl. ¶¶ 8-9. As to Oracle's copyright claim, the Complaint alleges that "Oracle
14 America owns copyrights in the code, documentation, specifications, libraries, and other
15 materials that comprise the Java platform" and that "Oracle America's Java-related copyrights
16 are registered with the United States Copyright Office, including those attached as Exhibit H."
17 Compl. ¶ 11. Exhibit H to the Complaint consists of certificates of copyright registrations
18 obtained by Sun for two identified works, named "Java 2 Standard Edition 1.4" and "Java
19 Standard Edition, Version 5.0" (the "Asserted Copyrights"). Compl. Ex. H. These registrations
20

21
22 ¹⁸ See Glossary – Android Developers, <http://developer.android.com/guide/appendix/glossary.html>; What is Android?,
23 <http://developer.android.com/guide/basics/what-is-android.html>; Android Overview,
24 http://www.openhandsetalliance.com/android_overview.html.

¹⁹ See What is Android?, <http://developer.android.com/guide/basics/what-is-android.html>.

25 ²⁰ See Dalvik – Android Open Source, <http://source.android.com/porting/dalvik.html>;
26 Apache Harmony – Open Source Java Platform, <http://harmony.apache.org>; Apache Harmony –
27 Apache License, <http://harmony.apache.org/license.html>; Licenses – Android Open Source,
28 <http://source.android.com/source/licenses.html>.

1 appear to relate to versions of certain Sun Java materials that were released as open-sourced
2 software in 2006 and 2007.²¹

3 Count VIII of the Complaint – the copyright infringement claim – alleges generally that
4 “[t]he Java platform contains a substantial amount of original material (including without
5 limitation code, specifications, documentation, and other materials) that is copyrightable subject
6 matter.” Compl. ¶ 38. The two operative paragraphs of Count VIII then state as follows:

7
8 39. Without consent, authorization, approval, or license, Google
9 knowingly, willingly, and unlawfully copied, prepared, published, and distributed
10 Oracle America’s copyrighted work, portions thereof, or derivative works and
11 continues to do so. Google’s Android infringes Oracle America’s copyrights in
12 Java and Google is not licensed to do so.

13 40. On information and belief, users of Android, including device
14 manufacturers, must obtain and use copyrightable portions of the Java platform or
15 works derived therefrom to manufacture and use functioning Android devices.
16 Such use is not licensed. Google has thus induced, caused, and materially
17 contributed to the infringing acts of others by encouraging, inducing, allowing
18 and assisting others to use, copy, and distribute Oracle America’s copyrightable
19 works, and works derived therefrom.

20 Compl. ¶¶ 39-40.

21 These paragraphs are mere conclusory statements apparently intended to assert two
22 different types of copyright infringement claims against Google. First, Oracle apparently
23 contends in paragraph 39 that Google itself infringes the Asserted Copyrights because “Google .
24 . . . copied, prepared, published and distributed *Oracle America’s copyrighted work, portions
25 thereof, or derivative works* and continues to do so.” Compl. ¶ 39 (emphasis added). Second,
26 Oracle apparently contends that Google is vicariously liable for alleged infringement of the
27 Asserted Copyrights by others because “[o]n information and belief, users of Android, including
28 device manufacturers, must obtain and use *copyrightable portions of the Java platform or works*

25 ²¹ See Jim Inscore, Opening Up: Laurie Tolson on Open Source Strategy for the Java
26 Platform, available at http://java.sun.com/developer/technicalArticles/javaopensource/OS_qa
27 (“Sun will release several significant components of Java SE by the end of 2006. . . . The rest of
28 a buildable JDK will be released in early 2007”).

1 *derived therefrom* to manufacture and use functioning Android devices” and that, for reasons that
2 are not explained, Google allegedly “has thus induced, caused, and materially contributed to the
3 infringing acts of others by encouraging, inducing, allowing and assisting others to use, copy,
4 and distribute Oracle America’s copyrightable works.” Compl. ¶ 40 (emphasis added).

5 The remainder of the allegations of Count VIII are general allegations that merely recite
6 additional generalities and claims for different types of relief. Compl. ¶¶ 41-46. Importantly, the
7 Complaint does not include any identification of any specific work created or distributed by
8 Google that allegedly infringes the Asserted Copyrights, nor does it even identify the type of
9 work (software code, reference materials, development kit materials) that allegedly infringes.
10 The Complaint also does not include any explanation or identification whatsoever of any alleged
11 unlicensed acts of infringement of the Asserted Copyrights by any other party (including those
12 for which Oracle seeks to hold Google vicariously liable) or any alleged acts of Google that
13 constitute inducement of infringement or contributory infringement with respect to any such
14 alleged unlicensed acts of others.

15 **B. Oracle Fails To State A Claim For Copyright Infringement.**

16 1. The Applicable Pleading Requirements Are Well-Settled.

17 The Federal Rules of Civil Procedure require that the complaint must include a short and
18 plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P 8(a)(2).
19 The United States Supreme Court’s opinions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544
20 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), confirmed that, although detailed factual
21 allegations are not required, satisfying Rule 8(a)(2) requires the complaint to plead sufficient
22 factual matter, accepted to be true, to state a claim to relief that is plausible on its face. *Iqbal*,
23 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555, 570). A pleading that offers only labels and
24 conclusions or a formulaic recitation of the elements of a cause of action is insufficient. *Iqbal*
25 556 129 S. Ct. at 1949. Courts in this district, including this Court, have applied *Iqbal* and
26 *Twombly* to dismiss copyright infringement claims that merely state the elements of the claims
27

1 and legal conclusions without any underlying facts. *See Miller v. Facebook, Inc.*, No. 5:10-cv-
2 264-WHA, 2010 U.S. Dist. LEXIS 31534, at *9 (N.D. Cal. Mar. 31, 2010).

3 2. Proper Pleading of Copyright Infringement Requires Sufficient
4 Factual Allegations Describing the Alleged Infringement.

5 A claim of copyright infringement requires the plaintiff to prove (1) ownership of a valid
6 copyright and (2) violation of one of the exclusive rights granted by section 106 of the Copyright
7 Act, 17 U.S.C. § 106. *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir.
8 2001). Applying *Iqbal* and *Twombly*, courts in this district have recently dismissed claims of
9 copyright infringement that did not include any factual allegations regarding *how* the defendant
10 allegedly infringed the plaintiff's copyright. *See Miller*, U.S. Dist. LEXIS 31534 at *9; *Cutler v.*
11 *Enzymes, Inc.*, No. 08-04650-JF, 2009 U.S. Dist. LEXIS 17942, at *8-9 (N.D. Cal. Feb 25,
12 2009).

13 In both *Miller* and *Cutler*, the complaints lacked any facts that described in sufficient
14 detail the infringing acts. In *Miller*, the complaint merely alleged that the defendant Facebook
15 “reproduced and distributed” an infringing work, by, among other things, publishing the work in
16 their application directory, allowing Facebook users to “search and view” the application. *See*
17 *Miller*, U.S. Dist. LEXIS 31534, at *4, *8-9. On Facebook's motion to dismiss, this Court found
18 such allegations deficient, and concluded that the plaintiff must provide “sufficient factual
19 allegations to explain *how* defendant Facebook copied, displayed, or distributed infringing
20 copies” of the work, and dismissed the complaint. *See Miller*, U.S. Dist. LEXIS 31534, at *9
21 (emphasis added). Similarly, the court in *Cutler* dismissed a complaint for copyright
22 infringement that did not include any specific facts about the alleged acts of infringement.
23 *Cutler*, 2009 U.S. Dist. LEXIS 17942, at *9 (granting motion to dismiss because “[a]side from
24 claims of ownership, the complaint is devoid of any other specific facts related to the Published
25 Work and alleged copyright infringement”).

1 Although promulgated before the Supreme Court issued *Iqbal* and *Twombly*, the pleading
2 forms in the Federal Rules of Civil Procedure confirm the need to plead sufficient factual support
3 describing the acts of infringement. Fed. R. Civ. P., Form 19 (2007). Form 19 – the form
4 complaint for copyright infringement – identifies the copyrighted work, identifies the allegedly
5 infringing work, and explains *how* the alleged infringement occurred. *See id.* Specifically, the
6 form pleading suggests an allegation to the effect that “[a]fter the copyright was issued, the
7 defendant infringed the copyright by publishing and selling a book entitled _____, which was
8 copied largely from the plaintiff’s book.” *Id.*

9 3. Oracle’s Claim For Copyright Infringement Is Deficient.

10 Oracle’s Complaint fails to satisfy the standards set forth in *Iqbal*, *Twombly*, and Form
11 19, and therefore dismissal of Count VIII would be fully consistent with the decisions in *Miller*
12 and *Cutler*. This authority is clear – Oracle’s Complaint must provide facts that identify or
13 describe (1) the works in which a valid copyright is claimed;²² (2) the alleged acts of
14 infringement, including identifying the allegedly infringing work or works, *see Cutler*, 2009 U.S.
15 Dist. LEXIS 17942, at *9; and (3) how any accused infringer has infringed and how any party
16 has induced or contributed to such infringement. *See Miller*, U.S. Dist. LEXIS 31534, at *9.
17 Because Oracle’s Complaint fails to provide any facts identifying any Google work that
18 allegedly infringes the Asserted Copyrights, and fails to provide any factual allegations as to how
19 Google or any third parties are allegedly infringing, Oracle’s Complaint does not state a claim
20 for copyright infringement.

21 Oracle’s Complaint includes only three allegations relating to direct copyright
22 infringement: (1) that Oracle owns copyrights in the Sun materials that comprise the Java
23 platform and, more specifically, in the Sun works that are the subject of the copyright

24 _____
25 ²² Oracle’s Complaint appears to identify two specific Sun works that presumably are the
26 subject of the copyrights on which Oracle’s claim is based, namely the works entitled “Java 2
27 Standard Edition 1.4” and “Java 2 Standard Edition, Version 5.0,” which are the works identified
28 in the Asserted Copyrights shown in Exhibit H to the Complaint.

1 registrations shown in Exhibit H, Compl. ¶ 11; (2) that Google has “copied, prepared, published
 2 and distributed *Oracle America’s copyrighted work, portions thereof, or derivative works* and
 3 continues to do so,” Compl. ¶ 39 (emphasis added); and (3) that “Google’s Android infringes
 4 Oracle America’s copyrights in Java and Google is not licensed to do so.” Compl. ¶ 39. These
 5 allegations:

- 6 • do not identify the type(s) of “copyrighted work” allegedly copied;²³
- 7 • do not specify whether Google has allegedly copied and distributed entire works
 8 of Sun / Oracle, “portions thereof” (and, if so, what portions), or “derivative
 9 works”;
- 10 • do not identify any specific work or works of Google – or even the types of
 11 materials – that Google has created by allegedly copying, preparing, publishing,
 12 and distributing Sun / Oracle’s copyrighted work; and
- 13 • do not provide any facts that suggest how any alleged infringement has occurred.

14 Rather than allege facts to support its claim, Oracle instead pleads nothing more than a
 15 rote recitation of certain of the exclusive rights the Copyright Act provides in 17 U.S.C. § 106,
 16 with absolutely no supporting facts. Like the complaints in both *Miller* and *Cutler*, there is no
 17 factual allegation as to *how* any Google materials relating to Android allegedly infringe the
 18 Asserted Copyrights. *See* Compl. ¶ 39. Indeed, Oracle fails to provide any assertion as to which
 19 part of Android – which even Oracle concedes is an “operating system software platform”
 20 consisting of numerous types and extensive amounts of materials, Compl. ¶ 12 – allegedly
 21 infringes the Asserted Copyrights. *See* Compl. ¶ 39. Oracle’s Complaint is precisely the type of
 22 bare recitation of elements that the Supreme Court warned against in *Iqbal*.

23
 24 _____
 25 ²³ The copyright registrations attached to Oracle’s Complaint as Exhibit H state that the Sun
 26 works that are the subject of the registrations include at least both “computer code” and
 27 “documentation and manuals.” Complaint, Ex. H, Form TX 6-196-514 at space 6(b) and Form
 28 TX 6-066-538 at space 6(b).

1 Oracle's allegations also fail to meet the requirements of Fed. R. Civ. P., Form 19, which
 2 requires factual pleadings that identify both the infringing work, and how that work infringes.
 3 See Fed. R. Civ. P., Form 19 ("the defendant infringed the copyright by publishing and selling a
 4 book entitled _____, which was copied largely from the plaintiff's book"). Oracle's Complaint
 5 does not come close to even this form pleading. Oracle's Complaint does not allege that any
 6 work of Google – Android or otherwise – is a copy of, or is substantially similar to, any of Sun /
 7 Oracle's copyrighted works. See Compl. ¶ 39.

8 This deficiency is compounded by the fact that "Android" as a whole contains over 11
 9 million lines of computer code, thousands of pages of documentation, and thousands of
 10 components.²⁴ See Compl. ¶ 39 ("Google's Android infringes Oracle America's copyrights").
 11 Oracle's Complaint provides no indication of what part or parts of "Android," which could
 12 include code, documentation, specifications, and many other types of materials, allegedly
 13 infringe.

14 There is no justification for Oracle's failure to plead sufficient facts to assert a copyright
 15 infringement claim. All of the relevant materials, including the Android source code, has been
 16 publicly available since the Android Open Source Project released the code base in 2008.²⁵
 17 Every fact that Oracle could have required to properly plead copyright infringement was
 18 available to Oracle before it filed this lawsuit, and Oracle and its counsel were required to make
 19 a good-faith evaluation of the merits of the claim. See Fed. R. Civ. P. 11(b)(3). Because all of
 20 the information Oracle requires is already publicly available, Oracle cannot excuse its vague
 21 pleading by claiming that it needs discovery to identify the accused works or acts.

23 ²⁴ Android is a complete set of software for mobile devices: an operating system,
 24 middleware and key mobile applications.
 25 http://www.openhandsetalliance.com/android_overview.html. It includes a full set of tools for
 26 developers, *id.*, and an entire suite of reference documentation,
 27 <http://developer.android.com/reference/packages.html>. The Dalvik virtual machine is only one of
 over 240 separate source code modules that make up Android. <http://android.git.kernel.org>.

²⁵ See, e.g., <http://www.android.com/timeline.html>; <http://android.git.kernel.org>.

1 vague regarding the alleged claim of infringement. *See Sega Enters. LTD. v. Accolade, Inc.*, No.
2 91-3871, 1992 U.S. Dist. LEXIS 4621, at *4 (N.D. Cal. Mar. 20, 1992).

3 The *Sega* court noted that the complaint vaguely alleged infringement of “other works”
4 (among other things), and ordered plaintiff to provide a more definite statement specifying “the
5 particular ‘other works’ which are subject to the copyright claim and registration of those works,
6 the acts constituting infringement of those works, and the dates the infringement occurred.” *Id.*
7 Similarly, Oracle’s Complaint asserts that Google has “copied, prepared, published, and
8 distributed Oracle America’s copyrighted work, portions thereof, or derivative works.” Compl. ¶
9 39. Oracle should at a minimum be required to identify any specific “copyrighted work” or
10 “portion thereof” that Google allegedly copied or distributed, any “derivative works” known to
11 Oracle that form the basis of its claim, as well as the acts constituting the alleged infringement.²⁶

12 Finally, as discussed above, Oracle’s Complaint fails entirely to identify any facts giving
13 rise to Oracle’s claim of vicarious infringement based on alleged acts of infringement by third
14 parties. Oracle’s more definite statement should include specification of the alleged acts of such
15 parties that Oracle believes infringe its Asserted Copyrights and how such acts infringe, as well
16 as the acts of Google that Oracle believes make Google liable for any such alleged infringement.

17 **III. Conclusion**

18 Oracle’s Complaint includes impermissibly vague and broad allegations of copyright
19 infringement. In particular, the Complaint does not specifically identify any allegedly infringing
20 works of Google, how Google has allegedly infringed Oracle’s rights in the two Sun works
21 attached to the Complaint, or how Oracle believes its claim of vicarious liability for copyright
22 infringement arises. For these reasons, Count VIII of Oracle’s Complaint fails to meet the

23
24 ²⁶ Oracle also contends that the “copyrightable” portions of the “Java platform” include,
25 “without limitation code, specifications, documentation, and *other materials*.” Compl. ¶ 38. To
26 the extent Oracle believes that Google has infringed or is liable for infringement by any party of
the copyrights in any works other than those that are the subject of the two registrations included
in Exhibit H to the Complaint, Oracle should identify any and all such other works and the

1 minimum pleading standards required by the law, and fails to properly put Google on notice of
2 the substance of Oracle's claims. Accordingly, the Court should dismiss Count VIII of the
3 Complaint, or, in the alternative, should require Oracle to provide a more definite statement of its
4 copyright claims.

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Respectfully submitted,

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26 copyright registrations for them. *See Sega*, 1992 U.S. Dist. LEXIS 4621, at *4.