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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ORACLE AMERICA, INC.

12 Plaintiff,

13 v.

14 GOOGLE INC.

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

Honorable Judge William Alsup

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING COPYRIGHT
DAMAGES**

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Subject to the approval of the Court, the parties stipulate and agree as follows:

1. The assessment and award of monetary relief, if any, for infringement arising as a result of the rangeCheck code and the decompiled files that were the subject of questions 3.A and 3.B of the phase one jury verdict (the “Copied Materials”) shall be deferred in accordance with this stipulation.

2. In the event that Oracle’s claim based on the SSO of the 37 accused API packages or any portion thereof (the “SSO Claim”) is ultimately submitted to a jury (the “Future Jury”) for an assessment and award of monetary relief, then:

A. Proceedings with respect to the SSO Claim will be bifurcated, i.e., liability will be tried separately from willfulness and damages;

B. Oracle shall be free to seek from the Future Jury monetary relief in the form of profits for the infringement arising as a result of the Copied Materials, but only to the extent such profits are not taken into account in computing any actual damages or profits sought for infringement of the SSO; provided, however, that nothing herein shall require Oracle to allocate its actual damages and/or profits claimed between the SSO and the Copied Materials; and

C. In the event Oracle seeks profits arising as a result of the Copied Materials in such a future damages phase, neither party may use any expert opinions or reports or other evidence that they could not have used in the event such claim for profits was tried before the current jury.

3. In the event that no portion of Oracle’s SSO Claim is submitted to a future jury for an assessment and award of monetary relief, then:

A. The parties waive their right to a jury trial on the issue of monetary relief if any, for infringement arising as a result of the Copied Materials;

B. Oracle waives any claim for actual damages or profits for such infringement; and

C. The Court will set an amount of statutory damages for such infringement

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in accordance with 17 U.S.C. § 504(c).


4. Nothing contained in this stipulation shall impair or adversely affect in any way the rights of the parties to raise in any appeal any and all issues relating to the Copied Materials; for the avoidance of doubt and without limiting in any way the generality of the foregoing, such rights of appeal shall include, among other issues: (a) issues relating to the definitions of “work as a whole” that formed part of the instructions to the current jury and/or whether use of the rangeCheck code or the decompiled files was *de minimis* as a matter of law and (b) issues relating to the amounts of any damages (including statutory damages) awarded in accordance with the procedures set forth above.

5. In the event the current jury returns a verdict finding infringement as to any claim of the 104 Patent or the 520 Patent, the parties shall proceed in accordance with the stipulations previously entered into between the parties.

~~PROPOSED~~ ORDER

The foregoing stipulation is approved, and IT IS SO ORDERED.

Date: May 16, 2012



Honorable William Alsup
Judge, United States District Court

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DATED: May 16, 2012

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ATTESTATION

I, Bruce W. Baber, am the ECF User whose ID and password are being used to file this STIPULATION RE INDIRECT PATENT INFRINGEMENT. In compliance with General Order 45, X.B., I hereby attest that Steven C. Holtzman has concurred in this filing.

Date: May 16, 2012

/s/ Bruce W. Baber
BRUCE W. BABER