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18

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC. | Case No. CV 10-03561 WHA

23   Plaintiff, | **ORACLE AMERICA, INC.'S OBJECTION TO COURT'S**
24   v. | **ANSWER TO JUROR QUESTION REGARDING "SYMBOLIC**
25 GOOGLE INC. | **REFERENCE" AND REQUEST FOR CURATIVE INSTRUCTION**
26   Defendant. |

27 | Dept.: Courtroom 8, 19th Floor
                                             | Judge: Honorable William H. Alsup
28

ORACLE'S OBJECTION TO COURT'S MAY 22 ANSWER REGARDING "SYMBOLIC REFERENCE" AND REQUEST FOR
CURATIVE INSTRUCTION
CASE NO. CV 10-03561 WHA
sf-3149587

1   Oracle further objects to the Court's answer delivered on May 22, 2012 to the question

2   asked by a juror at 10:35 a.m. regarding "the symbolic reference definition" and requests a

3   curative instruction.

4   As part of its answer to the juror's question, the Court instructed the jury that a reference

5   to data might be numeric or symbolic, but cannot be both. The Court's construction of "symbolic

6   reference" does not have a "one or the other" quality, so the Court's May 22 instruction was not

7   consistent with its claim construction. The inconsistency can be mitigated if the Court clarifies

8   that the "data" referred to in its construction is the ultimate data to be obtained or used after

9   symbolic reference resolution is performed—that is the "data" that is claimed elsewhere in the

10 claim language. Oracle requests that the Court promptly provide a curative instruction on that

11 point for the jury during deliberations on May 23, 2012.

12   The juror's question on May 22 at 10:35 a.m. asked:

13   In the symbolic reference definition, if we find a reference that identifies data by a
         numeric memory location of the data, does the existence of an initial numeric
14   reference preclude the existence of a symbolic reference?

15 (RT 4352:8-13.) In response, the Court repeated the construction of "symbolic reference"—"a

16 reference that identifies data by a name other than the numeric memory location of the data, and

17 that is resolved dynamically rather than statically"—but then instructed the jury that the

18 references in question must be in the instructions and that a reference is "either going to be a

19 numeric reference or it's going to be a symbolic reference." (RT 4353:9-16.) The Court further

20 stated that "for any given reference, it can't be both. It's got to be one or the other." (*Id*.) The

21 Court explained the jury's inquiry was to be as follows:

22   So how do you tell what it is? You look at the instruction set. You look at the
         reference. And you ask this question: Is that thing referring to the numeric
23   memory location?

24   If the answer is yes, then it's a numeric reference. If the answer is no, it's not
         referring to the numeric memory location, then it's a symbolic reference.
25

    (RT 4353:17-23.) The Court stated:
26

         If you find a numeric reference, that's a numeric reference. End of story. It can't
27   be both. Because a numeric reference is something that refers directly to the
         location in memory where that data is stored. It's not symbolic.
28

1   (RT 4354:5-8.)

2   The Court's claim construction of "symbolic reference" imposes no such limitation. In

3   particular, under the Court's construction, a reference could be symbolic as to *some* data and

4   numeric as to *other* data.   Indeed, so long as the reference is symbolic as to *some* data, then it

5   "identifies data by a name other than the numeric memory location of the data" and the reference

6   is a symbolic reference, regardless of whether it identifies *other* data by location. Hence, the

7   answer to the juror's question should have been, "No, the existence of an initial numeric reference

8   does not preclude the existence of a symbolic reference." By instructing the jury as it did, the

9   Court imposed an additional limitation on its construction of "symbolic reference" that is not

10   present in the original construction. That additional limitation may result in a finding of non-

11   infringement or no finding at all, as the jury wrestles with the question whether, in Android, an

12   index to an entry in a table can *only* be a numeric reference to data even if it is also a symbolic

13   reference to data in the data object.

14   Clarifying what "data" is actually at issue in the Court's construction could mitigate the

15   harm. The Court's construction is not explicit on what that "data" may be. Reading the

16   construction of symbolic reference in context, the "data" of the Court's construction is the "data"

17   that is actually claimed in the '104 patent: the data that is "obtained" in Claim 11 and the data that

18   is "thereafter used" in Claims 39, 40, and 41. By disambiguating what "data" is at issue in the

19   Court's construction of symbolic reference, on the facts here, the jury may have less difficulty

20   determining whether a reference is symbolic or numeric.

21   Oracle's infringement position is that Dalvik bytecode instructions contain "symbolic

22   references" (as defined by the Court) in the form of indices (including field indices—the "01"

23   from Google's demonstrative) that identify the *actual data to be obtained* by a name ("01") other

24   than the numeric memory location of that data. *See, e.g.*, RT 3303:2-3304:20 (Mitchell); TX

25   4015, 7:12-13.

26   By contrast, Google argued that the field indices ("01") can only be numeric references

27   because they are the location of "data" in the Field ID table of a dex file, which contains

28   information used to perform the resolution process and locate the data to be obtained. Google's

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1   argument ignores that the field indices specify the *actual data to be obtained* (*i.e.*, the data in an

2   Android data object), making them symbolic references under the Court's construction of

3   "symbolic reference." Moreover, the '104 patent never refers to information used in the

4   resolution process as "data." Instead, the patent specification and claim language refer to "data"

5   as being thereafter used for the operation identified by the instruction (*e.g.*, the LOAD instruction

6   accesses or fetches a value from a data object). Under the Court's construction, the jury could

7   find that the indices contained in Dalvik bytecode instructions are "symbolic references" to the

8   actual data they identify—they refer to that data by a name (*e.g.*, field index "01") other than the

9   numeric memory location of that data (*e.g.*, byte offset "48").

10   If the Court clarifies that "data" in its construction means the "data" that is actually

11 *claimed* in the '104 patent, then any inconsistency will be mitigated. ('104 patent, Claim 11:

12 "obtaining data in accordance to said numerical references"; Claims 39, 40: "wherein data from a

13 storage location identified by a numeric reference is thereafter used for the operation when the

14 instruction contains a symbolic field reference"; Claim 41: "wherein data from a storage location

15 is used thereafter for the operation when the instruction contains a symbolic field reference.")

16   Without that clarification, the jury may be misled into thinking that because Google has

17 argued that a field index ("01") is a location in the Field ID table, which contains information not

18 claimed or mentioned in the '104 patent claims, the field index must *only* be a numeric reference

19 and cannot be a symbolic reference to the *claimed* data—the actual data to be obtained. That is

20 incorrect under the Court's construction of "symbolic reference."

21   Oracle therefore requests that the Court promptly provide a curative instruction to the jury

22 that the "data" referenced in the asserted claims of the '104 patent is the claimed data—the actual

23 data to be obtained or used after symbolic reference resolution is performed.

24

25 Dated: May 23, 2012   MORRISON & FOERSTER LLP

26   By: /s/ *Michael A. Jacobs*
                                                      Michael A. Jacobs
27   *Attorneys for Plaintiff*
                                                      ORACLE AMERICA, INC.
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