[Counsel Signatures Appear at the End]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE AMERICA, INC. Plaintiff, v. GOOGLE INC. Defendant.	Case No. 3:10-cv-03561-WHA Honorable Judge William Alsup **JOINT MEMORANDUM REGARDING THE COURT'S TENTATIVE CASE PLAN**

Plaintiff Oracle America, Inc. ("Oracle") and Defendant Google Inc. ("Google") present their views on the Court's May 11, 2011 Notice re Tentative Case Plan. As directed, the parties engaged in a meet and confer, during which the parties reached agreement on some points and remain in disagreement on others. This memorandum summarizes these points of agreement and outstanding disputes.

I. Agreed Points

1. The current fact discovery cut-off remains in effect, and the parties shall conduct discovery and file motions with the assigned Magistrate-Judge accordingly.
2. By June 1, 2011, Oracle shall narrow its patent infringement case to no more than 50 asserted claims.
3. By June 15, 2011, Google shall narrow its invalidity case to no more than six grounds of invalidity per asserted claim. A reference or set of references setting forth an anticipation or obviousness theory shall be counted by "chart" pursuant to Patent L.R. 3-3(c) (*i.e.*, anticipation by a reference shall be counted as one ground for purposes of this paragraph; references setting forth an obviousness combination shall be counted as another ground). Other grounds shall be counted by stated legal theory, e.g., "enablement," "lack of written description," "improper broadening."
4. The Court will entertain a summary judgment motion by Google on the copyright issue, and Oracle may seek the Court's leave to file a summary judgment motion on copyright issues as well. Briefing on copyright issues will adhere to the following schedule:
    a. Opening brief(s) on August 1, 2011;
    b. Opposition brief(s) on August 19, 2011; and
    c. Reply briefs on August 29, 2011.
5. Other summary judgment motions will be entertained only upon obtaining leave pursuant to the Court's previous order to that effect.
6. The trial remains set to begin on October 31. The trial, addressing all issues, will last for three weeks.

II. Disputed Issues

The parties could not reach agreement on the following issues:

A. Final Number of Claims and Defenses for Trial

7a. Oracle's proposal: By September 1, 2011, or no later than 15 days after a ruling on any pending patent-related summary judgment motions allowed pursuant to paragraph 5 above, whichever is later, Oracle shall narrow its patent infringement case to no more than 21 asserted claims. By no later than 15 days after Oracle's narrowing of claims pursuant to this paragraph, Google shall narrow its invalidity case to no more than four grounds of invalidity per claim. In the alternative, Oracle proposes that any narrowing of claims to be asserted at trial be addressed by the parties in papers submitted in connection with the final pre-trial conference. Oracle opposes any other approach to narrowing its asserted claim on the grounds set forth in its response to the Court's May 4, 2011 Order.

7b. Google's proposal: Google believes that the Court's initial plan for narrowing the claims makes the case more manageable for the Court and the jury, and is the best use of judicial resources. Google proposed a compromise of 10 to 14 claims to be asserted by Oracle (upon which the parties could not reach agreement) and believes the Court has the authority to limit the number of claims asserted to one claim per patent without depriving Oracle of due process in asserting its claims. *See In re Katz Interactive Call Processing Patent Lit.*, Case No. 2009-1450 et al., 97 U.S.P.Q.2d 1737, 1744-45, 2011 WL 607381, *4, (Fed. Cir. Feb. 18, 2011) (rejecting plaintiff's argument that district court's narrowing of claims for trial violated due process). Google otherwise agrees that no later than 15 days after Oracle's narrowing of claims pursuant to this paragraph, Google shall narrow its invalidity case to no more than four grounds of invalidity per claim.

B. Stay Pending Resolution of Reexamination Proceedings

8a. Oracle's proposal: Pursuant to the Court's May 11, 2011 Notice re Tentative Case Plan, no stay will be granted pending reexamination. Oracle will bear the risk of subsequent adverse events in reexamination pursuant to applicable law.

8b. Google's proposal: To the extent that Oracle intends to assert a large number of claims at trial, resulting in a complicated and extremely burdensome trial, Google defers to the Court's discretion to grant a stay pending reexamination. In the event that there is no stay, Oracle will take the risk that claims selected for trial will be cancelled or modified during re-examination

FILER'S ATTESTATION

I, Michael A. Jacobs, am the ECF user whose identification and password are being used to file this JOINT MEMORANDUM REGARDING THE COURT'S TENTATIVE CASE PLAN. In compliance with General Order 45.X.B, I hereby attest that Scott T. Weingaertner concurs in this filing.

DATED: May 18, 2011

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