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March 14, 2012

Honorable William Alsup
U.S. District Court, Northern District of
California
Courtroom 8 -- 19th Fl.
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Oracle America, Inc. v. Google Inc.*
Cased No. 3:10-cv-03561 WHA

Dear Judge Alsup:

Google respectfully requests leave to file a motion to continue for a short period the trial in this matter. Good cause exists for the requested continuance because Google's lead trial counsel has pending trial commitments in other matters that conflict with the April 16 trial date.

I am lead trial counsel for Google in this case. Good cause exists for a continuance of the April 16 trial because I (and several other members of Google's trial team) will not be available for at least a portion of the scheduled eight-week trial. *See generally* Fed. R. Civ. P. 16(b)(4). As Google stated in the Joint Pretrial Conference Statement filed in December and again in my letter of February 24, 2012, I am presently scheduled to commence trial in *Commonwealth Scientific and Industrial Research Organization v. Lenovo (United States) Inc.*, E.D. Tex. No. 6:09-cv-399 LED (Hon. Leonard Davis) on April 9. Defendants are requesting a ten-day trial through April 20. The pretrial conference in that case is set for March 22, 2012.

Honorable William Alsup
March 14, 2012
Page 2

Our trial team in the *Commonwealth Scientific* case includes several other professionals from my firm who are on the Google trial team for this case: namely, attorneys Christa Anderson and Matthias Kamber, and paralegals Gary Padilla and Raina Magat. I am also set for trial in *Genentech Inc. v. Trustees of the University of Pennsylvania*, N.D. Cal. No. 5:10-cv-02037 LHK (PSG) (Hon. Lucy Koh) on June 11, 2012. Judge Koh recently advised the parties that she expects the trial to last through the end of June, and she has scheduled a bench trial concerning certain issues on June 29, 2012. The pretrial conference in that case is scheduled for May 30.

Accordingly, Google's motion would seek to continue the trial in this case until after my June 29, 2012 bench trial in *Genentech Inc. v. Trustees of the University of Pennsylvania*. This continuance would allow me to fulfill my professional obligations in other cases, while still serving as lead trial counsel to Google for the entirety of this matter. In the alternative, Google's motion would request that the Court continue the trial date in this case two weeks to April 30, 2012. This brief, two-week continuance would allow me to return from the *Commonwealth Scientific* trial in Texas in time to try as many phases of this case as I can before beginning my trial before Judge Koh.

The requested continuance would not prejudice Oracle. The difference between an April trial and a trial a few months later is insignificant in light of Oracle's delay in pursuing this case. Android was first announced in November 2007 and has been on the market since October 2008. Oracle waited until August 2010 to file its complaint, and it has never sought a preliminary injunction to remedy any alleged "irreparable harm" allegedly caused by Android. To the contrary, Oracle has sought billions of dollars in damages as compensation for that alleged harm. Were Oracle to prevail at trial, a damages award would be sufficient to compensate

Honorable William Alsup
March 14, 2012
Page 3

Oracle for any such harm. Oracle therefore has no basis to complain that a short continuance to allow Google's lead counsel to be available will somehow prejudice Oracle.

I have done everything possible to avoid these conflicts. In the parties' December 7, 2011 Joint Pretrial Conference Statement, I advised the Court of my prior trial commitments "in the first few months of 2012 that could conflict with the trial date in this case." (Dkt. 644 at 3-4). At the December 21, 2011 Final Pretrial Conference, the Court advised the parties that it would attempt to work around prior trial commitments. December 21, 2011 Hrg. Tr. [Dkt. 662] at 133:16-21 ("**MR. VAN NEST**: I have a number of conflicts Your Honor, in April. **THE COURT**: All right, that was who I'm thinking of. You know, if you got conflicts, I'm going to try to help you out, you are the lead lawyer. But if that goes away, maybe we could try it in the spring."). The Court further advised the parties that, while an April or May trial was a possibility, they should reserve September-December of 2012 for trial of this matter. *Id.* at 164:12-19. In light of these comments, I did not attempt to withdraw as lead counsel in either of the other cases.

For the foregoing reasons, Google respectfully requests leave to file a motion to continue the trial date until after June 29, 2012, or, alternatively to April 30, 2012. In the event the Court grants Google's request, I will promptly advise the Court of any changes to my trial schedule in the other matters described herein.

Sincerely,

KEKER & VAN NEST LLP

ROBERT A. VAN NEST