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14 GOOGLE INC.

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.

Case No. 3:10-cv-03651 WHA

**GOOGLE'S MOTION FOR JUDGMENT
AS A MATTER OF LAW ON SECTIONS
OF COUNT VIII OF ORACLE'S
AMENDED COMPLAINT**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

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1 **I. INTRODUCTION**

2 On April 12, 2012, Oracle filed a summary of its copyright infringement allegations. Dkt.
3 No. 899. During its case-in-chief, Oracle failed to prove the facts necessary to sustain a number
4 of those allegations. Pursuant to Fed. R. Civ. P. 50, Google is therefore entitled to Judgment as a
5 Matter of Law on the following grounds.¹ *First*, Google is entitled to judgment as a matter of law
6 that the source code and object code implementing the 37 API packages are not derivative works
7 of Oracle's specifications. *Second*, Google is entitled to judgment as a matter of law that the
8 method signatures are not protected by copyright under both section 102(b) and the short words
9 and phrases doctrine. *Third*, Google is entitled to judgment as a matter of law that the alleged
10 literal copying is *de minimis* and thus non-actionable. *Fourth*, Google is entitled to judgment as a
11 matter of law that its specifications for the 37 API packages do not infringe Oracle's
12 specifications. *Fifth*, Google is entitled to judgment as a matter of law on the entire copyright
13 case because Oracle has failed to prove the actual contents of the works that are the subject of its
14 copyright registrations. *Sixth*, to the extent that the Court accepts Oracle's newly advanced
15 "collective work" argument, Google is entitled to judgment as a matter of law of non-
16 infringement as to all constituent elements of the registered works, because Oracle has failed to
17 prove authorship of any component parts of the works.

18 **II. LEGAL STANDARD**

19 Judgment as a matter of law is proper when "a party has been fully heard on an issue and
20 there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that
21 issue." Fed. R. Civ. P. 50(a)(1). Rule 50 "allows the trial court to remove . . . issues from the
22 jury's consideration when the facts are sufficiently clear that the law requires a particular result."
23 *Weisgram v. Marley Co.*, 528 U.S. 440, 448 (2000) (internal quotations omitted). The standard
24 for granting judgment as a matter of law, in practice, mirrors the standard for granting summary
25 judgment, and "the inquiry under each is the same." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

26 _____
27 ¹ Google reserves the right under Fed. R. Civ. P. 50(a)(2) to file a further motion for judgment as
28 a matter of law on these or other issues at the close of the evidence. *See* Fed. R. Civ. P. 50(a)(2)
("A motion for judgment as a matter of law may be made at any time before the case is submitted
to the jury.").

1 242, 250-51 (1986).

2 **III. ARGUMENT**

3 **A. Google is entitled to judgment as a matter of law that the source code and**
4 **object code implementing the 37 API packages are not derivative works of**
5 **Oracle's specifications.**

6 Oracle claims that Google's *implementing source code* is a derivative work of Oracle's
7 *English-language descriptions* because Google's source code *does the things that the English*
8 *descriptions describe*. See Dkt. No. 859 at 10 (Oracle is claiming infringement based on
9 "Google's creation of derivative works from the English-language descriptions of the elements of
10 the API specifications"). That is nothing but an assertion that *Google's expression* infringes
11 *Oracle's ideas*. Oracle thus stands as an exception to the Supreme Court's statement that "no one
12 would contend that the copyright of the treatise would give the exclusive right to the art or
13 manufacture described therein." *Baker v. Selden*, 101 U.S. 99, 102 (1879). Because Oracle's
14 position is barred by Section 102(b) of the Copyright Act, Google is entitled to judgment as a
15 matter of law that the source code and object code implementing the 37 API packages are not
16 derivative works of Oracle's specifications. See 17 U.S.C. § 102(b). This issue raises a question
17 of law that does not depend on any disputed issues of fact, and thus is well-suited to resolution on
18 a Rule 50 motion.

19 Oracle's derivative work claim is a "classic case of trying to lay claim to the ownership of
20 an idea." RT 1869:15-16 (Court). The specifications "explain in detail what the module is
21 supposed to accomplish," and writing implementing code that *does* what the specifications
22 *explain* is like "creative writing." RT 1869:18-21 (Court). Oracle's derivative work claim is
23 contrary to the idea/expression dichotomy that is codified in Section 102(b) of the Copyright Act.
24 It also is contrary to the statutory definition of a derivative work, which is a work based on "one
25 or more preexisting works," 17 U.S.C. § 101, not a work based on preexisting *ideas*.

26 Oracle's approach is barred by *Baker v. Selden*:

27 To give to the author of the book an exclusive property in the art described therein,
28 when no examination of its novelty has ever been officially made, would be a
surprise and a fraud upon the public. That is the province of letters-patent, not of
copyright. The claim to an invention or discovery of an art or manufacture must
be subjected to the examination of the Patent Office before an exclusive right

1 therein can be obtained; and it can only be secured by a patent from the
2 government.

3 101 U.S. at 102. It is also barred by *Mazer v. Stein*: “Unlike a patent, a copyright gives no
4 exclusive right to the art disclosed; protection is given only to the expression of the idea—not the
5 idea itself.” 347 U.S. 201, 217 (1954). And it is barred by *Sega Enters. Ltd. v. Accolade, Inc.*,
6 under which “functional requirements for compatibility” with a system described by or
7 implemented in a copyrighted work cannot be protected by copyright law. 977 F.2d 1510, 1522
8 (9th Cir. 1992).

9 **B. Google is entitled to judgment as a matter of law that the names and
10 declarations from the 37 API packages that appear in the Android source
11 code are not copyrightable.**

12 The Court has already held that the names of API elements are not protectable. Copyright
13 MSJ Order [Dkt. 433] at 7:24-8:4. The Court reached this holding in reliance on the “words and
14 short phrases” doctrine. *See id.*; 37 C.F.R. § 202.1(a).

15 For the same reason, the declarations (i.e., the method signatures)² in the 37 API packages
16 are not protectable. A declaration (e.g., “public static int max(int arg1, int arg2)”³) is a short
17 series of words—a short phrase. A short phrase is not protectable, just as a name cannot be
18 protected. 37 C.F.R. § 202.1(a). Indeed, in *Sega*, the Ninth Circuit held that computer code of a
19 similar length was “probably unprotected under the words and short phrases doctrine.” 977 F.2d
20 at 1524 n.7.

21 Moreover, the declarations *must* remain exactly the same in order to ensure compatibility
22 with Java programs calling on those 37 API packages. *See* RT 520:4-6 (Screven) (if the API
23 packages were redone, “there would be millions of Java programmers out there who are—know
24 how to use the standard APIs as they currently exist, and would have to be reeducated to use these
25 new APIs”); RT 765:6-8 (Bloch) (“If you get anything even a little bit wrong, if you type a capital
26 letter when the method name has lower case letter in Java your program won’t run.”). Functional
27 requirements for compatibility are not protected by copyright. *Sega*, 977 F.2d at 1522 (citing 17

28

² RT 796:2-25 (Bloch) (explaining what a method signature, or declaration, is).

³ RT 796:19:21 (Bloch).

1 U.S.C. § 102(b)).

2 In sum, the names and declarations from the 37 API packages are unprotectable both by
3 virtue of the words and short phrases doctrine, and Section 102(b) of the Copyright Act. Thus,
4 Google is entitled to judgment as a matter of law that its use of the names and declarations from
5 the 37 APIs is not copyright infringement.

6 **C. The alleged literal copying is *de minimis* and thus non-actionable.**

7 *De minimis* acts of copying are not actionable. *Newton v. Diamond*, 388 F.3d 1189, 1192-
8 93 (9th Cir. 2004). Where the only similarity is as to “nonessential matters,” the copying is *de*
9 *minimis*. *See id.* at 1195 (quoting 4 NIMMER ON COPYRIGHT § 13.03[A][2], at 13-48). Where a
10 defendant copies only “a portion of the plaintiff’s work exactly or nearly exactly . . . the
11 dispositive question is whether the copying goes to trivial or substantial elements.” *Id.* That
12 substantiality is judged by “considering the qualitative and quantitative significance of the copied
13 portion in relation to the plaintiff’s work as a whole.” *Id.* (emphasis added); *see also Computer*
14 *Assoc. Int’l, Inc. v. Altai, Inc.*, 982 F.2d 693, 714-15 (2d Cir. 1992). Oracle bears the burden of
15 proving the significance of any copied code. *MiTek Holdings, Inc. v. ArcE Eng’g Co.*, 89 F.3d
16 1548, 1560 (11th Cir. 1996) (“The burden is on the copyright owner to demonstrate the
17 significance of the copied features, and, in this case, MiTek has failed to meet that burden.”).

18 Oracle has failed to prove the significance of any of the allegedly copied features. Oracle
19 hired Dr. Marc Visnick to compare the code in the Java JDK to Android 2.2. RT 1309:8-1310:18
20 (Mitchell). This entailed a comparison of hundreds of thousands, or even millions of lines of
21 code as well as “thousands and thousands” of separate files. RT 1310:19-1311:1 (Mitchell).
22 Despite this “very extensive” search, RT 1310:24-1311:1, Dr. Visnick only identified 12 files that
23 allegedly contained copied code. *See* RT 1313:1-11 (Mitchell). These files consist of a nine-line
24 function called rangeCheck, two comment files that never appeared on a phone, and ten test files
25 that never appeared on a phone. *See* RT 1314:2-1320:6 (Mitchell). Oracle presented no evidence
26 that this allegedly copied code has quantitative or qualitative significance. As a matter of law,
27 any copying of these files was therefore *de minimis*.

28

1 **1. The relevant work is J2SE 5.0**

2 In *de minimis* analysis, the copied material must be compared to the “work as a whole.”
3 *Newton*, 388 F.3d at 1195. In this case, for the reasons given in Google’s supplemental brief filed
4 earlier this evening, the “work as a whole” is J2SE, which is the work that Oracle registered with
5 the Copyright Office. *See* Google’s April 25 Copyright Brief, Dkt. No. 982, at 3-6. Moreover,
6 even if the Court were inclined to consider the possibility of a smaller “work,” Oracle has
7 presented no evidence that any such smaller work would be appropriate, under any test. Finally,
8 even if the relevant work were the individual packages—a position supported by no evidence
9 other than attorney argument (*see* RT 1633:21-1634:6), the portions of the twelve files that were
10 allegedly copied would still be trivial and insignificant.⁴

11 **2. The nine-line rangeCheck method is quantitatively and qualitatively**
12 **insignificant.**

13 The rangeCheck method consists of *nine lines* of code within the TimSort and
14 ComparableTimSort files. *See* RT 1314:15-1315:7 (Mitchell). This is in comparison to hundreds
15 of thousands of lines of code in the larger library. RT 1315:10-13 (Mitchell). According to Josh
16 Bloch, who wrote the code, the rangeCheck function is “[v]ery, very simple”; “[a]ny competent
17 high school programmer could write it.” RT 815:13-16 (Bloch). Even Oracle’s expert Dr.
18 Mitchell conceded that “a good high school programmer” could write rangeCheck. RT 1316:24-
19 25 (Mitchell). In fact, the rangeCheck method is not even a part of the most recent and current
20 versions of Android. *See* RT 825:8-19 (Bloch). Oracle introduced no evidence that the nine-line
21 rangeCheck function is anything other than trivial and insignificant, whether the work as a whole
22 is Arrays.java or J2SE 5.0.

23 **3. The comments contained in two source code files are quantitatively**
24 **and qualitatively insignificant.**

25 Dr. Visnick also identified two source code files, among the thousands of files in J2SE,
26 that included comments that were the same in J2SE and Android. *See* RT 1317:6-8 (Mitchell).

27 ⁴ Further supporting the insignificance of the allegedly copied code is the fact that Dr. Cockburn,
28 Oracle’s damages expert, provided no damages theory based on any of this code. Ruling that the
alleged copying of this code is *de minimis* as a matter of law would thus simplify the case for the
jury, while having no impact on Oracle’s recovery, aside from the minimal statutory damages.

1 These comments are completely insignificant compared to J2SE as a whole, and are also
2 insignificant compared to the source code files in which they are found. These comments are not
3 part of the source code that is compiled when the files are run. *See* RT 1317:12-20 (Mitchell). If
4 these comments were taken out, the code would work in exactly the same way as it does with the
5 comments included. Oracle’s expert, Dr. Mitchell, agreed that these comments “don’t have any
6 impact, whatsoever, in how the program runs once it’s compiled.” RT 1318:1-3 (Mitchell).
7 Again, Oracle introduced no evidence that these comments—which Oracle’s expert could not
8 even identify as having been part of a single handset—are anything other than trivial and
9 insignificant. *See* RT 1318:4-6 (Mitchell).

10 **4. The eight Android test files are quantitatively and qualitatively**
11 **insignificant.**

12 Finally, Dr. Visnick identified eight Android test files that are allegedly copied from files
13 in J2SE. Aside from their existence, there is almost no testimony about these files at all in the
14 record. Oracle’s expert, Dr. Mitchell, testified that he had no reason to believe that these files
15 were ever placed on a handset. *See* RT 1319:15-20 (Mitchell). There is no other evidence in the
16 record suggesting that these files were ever placed on a handset. There is also no evidence in the
17 record that these files had any significance at all to the functioning of either J2SE or Android.⁵

18 **D. Google is entitled to judgment as a matter of law that its specifications for the**
19 **37 API packages do not infringe Oracle’s copyrights.**

20 Oracle alleges that Google’s documentation for the 37 accused API packages infringes
21 Oracle’s copyrights. Specifically, Oracle alleges that (a) the substance of Android’s English-
22 language documentation infringes; and (b) the selection, structure, and organization of that
23 documentation also infringes. The Court should grant judgment as a matter of law as to at least
24 the first allegation because the evidence cannot support a finding that the content of

25 ⁵ Dr. Mitchell did testify that *test files generally* are an important part of software development.
26 RT 1330:15-24 (Mitchell). However he never testified as to how many test files there were in
27 J2SE or Android, or to the role played by *these particular* test files. The best Dr. Mitchell could
28 do was to state that “*if* [these files] helped [Google] test other code they were developing, and
speed up and lessen the cost of testing and quality assurance, then that would have a big value to
[Google].” RT 1330:25-1331:5 (emphasis added). There is no evidence in the record that these
eight files, out of the thousands of files in Android and J2SE, were anything other than trivial and
insignificant.

1 documentation describing the 37 accused API packages in Android was copied from the Java
 2 specification. The Court should also dismiss the second allegation because it simply collapses
 3 into Oracle's claim that Google copied the structure, sequence, and organization of the 37
 4 accused API packages; the documentation is generated by an automated program, such that the
 5 structure, sequence, and organization of the documentation is a natural derivative of the structure,
 6 sequence, and organization of the API packages it represents. *See* RT 1169:3-4 (Lee).

7 **1. The evidence cannot support a finding that Android's English-**
 8 **language documentation was copied from the Java API specifications.**

9 Oracle adduced evidence of precisely three examples of alleged substantial similarity
 10 between Google's and Oracle's specifications for the 37 APIs. A "mere scintilla" of evidence is
 11 insufficient to support a jury verdict. *See Lakeside-Scott v. Multnomah County*, 556 F.3d 797,
 12 802 (9th Cir. 2005) (quoting *Willis v. Marion County Auditor's Office*, 118 F.3d 542, 545 (7th
 13 Cir. 1997)). Oracle's three examples—out of over 11,000 pages of specifications (RT 617:2-7
 14 (Reinhold))⁶—cannot support a jury verdict.

15 In its first example, Oracle focused on the descriptions in the J2SE and Android
 16 specifications for the CipherInputStream class in the javax.crypto package. Counsel for Oracle
 17 asked Bob Lee to compare the following portions of the descriptions of CipherInputStream in the
 18 J2SE 5.0 and Android specifications:

J2SE 5.0	Android
A CipherInputStream is composed of an InputStream and a Cipher so that read() methods return data that are read in from the underlying InputStream but have been additionally processed by the Cipher. The Cipher must be fully initialized before being used by a CipherInputStream.	This class wraps an InputStream and a cipher so that read() methods return data that are read from the underlying InputStream and processed by the cipher. The cipher must be initialized for the requested operation before being used by a CipherInputStream.

19
 20
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 22
 23
 24 *Compare* TX 610.2 with TX 767; *see also* RT 1169:25-1170:19 (Lee). These are sufficiently
 25 different that no reasonable jury could find that they are substantially similar. Oracle's second

26
 27 ⁶ The 11,000 page figure is the length of the specifications for just the 37 API packages. The
 28 specifications for all 166 API packages of the J2SE 5.0 platform presumably are several-fold
 longer, and the size of the J2SE 5.0 platform *as a whole* is larger still.

1 and third examples are no better. *See* RT 1171:3-1172:25 (Lee) (comparing descriptions in the
2 Android and J2SE specifications for the Cipher class in the javax.crypto package); RT 1174:17-
3 1175:9 (Lee) (comparing descriptions in the Android and J2SE specifications for the Pipe class in
4 the java.nio.channels package).

5 As Mr. Lee explained, any similarities between the specifications are to be expected,
6 given that the thing being described *is the same* in both specifications:

7 Q. Highly similar? Not so similar? What's your judgment?

8 A. In this case they contain the same words, certainly, but that's to be
9 expected when you're trying to—you're describing various specific concepts in as
few words as possible. You're trying to provide, like, a very concise explanation.

10 Like, for example, the first sentence. What is a pipe, in one sentence.
11 Certainly, if you're trying to do it in that few words, they are going to contain
similar words because these are kind of, I guess, the common language or
12 currency of these APIs and simply the technology.

13 Like, "pipe" isn't even actually a—it's not necessarily a Java term. It
predates Java.

14 Q. So you would—

15 A. Like, it's a common technical term.

16 RT 1175:10-24 (Lee). On these facts, any protection in the descriptions in the J2SE 5.0
17 specifications is, at best, thin, and protected only against virtually identical copying. *See Allen v.*
18 *Academic Games League of Am., Inc.*, 89 F.3d 614, 619 (9th Cir. 1996) (applying merger doctrine
19 to deny protection to written expression of game rules); *Incredible Techs., Inc. v. Virtual Techs.,*
20 *Inc.*, 400 F.3d 1007, 1013 (7th Cir. 2005) ("utilitarian explanations" of a system "are not
21 sufficiently original or creative to merit copyright protection," or alternatively are protected "only
22 against virtually identical copying").⁷

23 Professor Mitchell's testimony does not help Oracle's case because he did not apply the
24 correct standard. When asked whether the description "Returns a reference to the private key
25 component of this key pair" (J2SE) is substantially similar to the description "Returns the private

26 ⁷ *See also Johnson v. Gordon*, 409 F.3d 12, 19 (1st Cir. 2005) ("copyright law protects original
27 expressions of ideas but it does not safeguard either the ideas themselves or banal expressions of
28 them" (emphasis added) (citing *Feist Pubs., Inc. v. Rural Tele. Serv. Co.*, 499 U.S. 340, 345-51
(1991)).

1 key” (Android), Professor Mitchell testified, “I think if you were considering using this method,
2 both would *tell you the same information*, that you can use this method to get the private key
3 component of the key pair.” RT 1328:2-4 (Mitchell) (emphasis added). When asked again, he
4 testified, “I think in the context of the rest of the description they *mean the same thing*.” RT
5 1328:9-10 (Mitchell) (emphasis added). When asked a *third* time whether the descriptions are
6 substantially similar, and directed by the Court to answer “yes” or “no,” Professor Mitchell
7 responded, “Yes.” RT 1328:24 (Mitchell). The only reasonable conclusion that a jury can draw
8 from this series of responses is that Professor Mitchell is basing his conclusion of substantial
9 similarity on the fact that both descriptions express the same *idea*. That, however, is not
10 infringement. *See* 17 U.S.C. § 102. Professor Mitchell’s opinion about alleged substantial
11 similarity between the Android and J2SE specifications must therefore be disregarded entirely.

12 Given the thin protection for these descriptions, no reasonable jury could conclude that the
13 Android specifications infringe the Oracle copyrights. In the alternative, and only in the event
14 that the Court concludes that the jury should decide the issue of whether Google’s specifications
15 infringe Oracle’s specifications on a class-by-class basis, Google is entitled to judgment as a
16 matter of law that none of its specifications for classes other than CipherInputStream in the
17 javax.crypto package, the Cipher class in the javax.crypto package, and the Pipe class in the
18 java.nio.channels package infringe the Oracle specifications for the corresponding classes. The
19 only evidence in the record relates to these classes; Oracle did not present evidence on any other
20 classes. Oracle could have, but didn’t, present evidence of an automated comparison between the
21 Android and Java documentation as a whole, as it did with the implementing source code. This
22 absence is telling. It is also grounds to dismiss Oracle’s claim that Android’s documentation for
23 anything but the CipherInputStream, Cipher, and Pipe classes infringe Oracle’s specifications for
24 those same classes.

25 **2. The evidence cannot support a finding that the structure, sequence,
26 and organization of Android’s English-language documentation was
copied from the Java API specifications.**

27 Oracle elicited testimony that the sequence, structure, and organization of the
28 documentation for the 37 accused API packages lines up with that of the corresponding Java

1 documentation. Mr. Lee testified as follows:

2 Q. And the structure of the documentation is identical; correct, sir? And if
3 you think of it as an outline, the outline would match identically; correct, sir?

4 A. Yes.

5 Q. And that's because on the Android side you're documenting the same
6 application programming interfaces as were documented on the Java side; correct,
7 sir?

8 A. Yes.

9 RT 1174:9-16 (Lee). But this is no surprise. As Mr. Lee also testified, the documentation for
10 both Java and Android is created automatically by a tool that reads demarcated portions of the
11 source code for inclusion in a template. *See* RT 1168:21 – 1169:15 (Lee). In short, the creation
12 of the documentation is mechanized. *See* RT 607:18-24, 614:1-4 (Reinhold). As such, if based
13 on the same starting point—the names of the 37 API packages at issue—the structure, sequence,
14 and organization of the Android and Java documentation inevitably will be the same.

15 Given that the documentation is generated automatically, Oracle's allegation that the
16 structure, sequence, and organization of the Android documentation infringes Oracle's copyrights
17 on the Java specification collapses into Oracle's separate, overriding claim that Google's use of
18 the names of the 37 API packages infringes Oracle's copyrights on the Java framework, including
19 those packages. Similarities in the structure, sequence, and organization of the documentation are
20 just an inevitable byproduct of using the same names of those API packages; they are not a
21 separate act of infringement. Put another way, the similarities derive from Google's use of the
22 same names of the 37 API packages at issue, not from a separate act of copying any Oracle
23 documentation for those 37 API packages. Accordingly, Oracle's separate claim that the
24 structure, sequence, and operation of the documentation infringes should be dismissed as a matter
25 of law, leaving the actual issue—Google's use of the names of the 37 accused API packages—for
26 the jury to decide.

27 **E. Oracle's copyright claim should be dismissed due to a failure to prove the
28 actual contents of the works that are the subject of its copyright registrations.**

Oracle has not offered any proof of the actual contents of the works that are the subject of
its copyright registrations. More specifically, there is no evidence that either TX 610.2 or TX

1 623, the exhibits that Dr. Reinhold sponsored and identified as “a DVD containing an electronic
2 copy of the Java 5 – the JDK documentation,” including “the API specification for Java 5” and a
3 DVD containing “the source code for Version 5” (4/19 Tr. at 672, 691) is in fact a true, complete
4 and accurate copy of *Java version 5.0 as it was when Sun’s application was submitted to the*
5 *Copyright Office in 2004*. Oracle, in short, did not prove that any exhibit in evidence is the
6 actual “work” that is the subject of the registration of the Java platform version 5.0. Dr. Reinhold
7 made no effort to connect either of the DVDs with the registration, and no other Oracle witness
8 did so.

9 Oracle’s evidence with respect to TX 622—what it has identified as the Java platform
10 version 1.4, the subject of the other copyright registration asserted by Oracle—was no better. RT
11 691 (Reinhold) (“622 is the DVD and source code for version 1.4 of the platform”; no testimony
12 that the DVD contains the work as it was at the time of the copyright application or that the DVD
13 contains the same work that was submitted to the Copyright Office).

14 Without evidence from Oracle as to what the “works as a whole” are that are the subject
15 of the registrations, there is no proof that can form the basis of any analysis of any copyright
16 issue. This lack of evidence is fatal to Oracle’s claim.

17 **F. If the Court accepts Oracle’s “collective work” argument, Google is entitled**
18 **to judgment as a matter of law of non-infringement of each of the component**
19 **parts of the registered works, because Oracle has not proved authorship of**
20 **the constituent elements.**

21 For the reasons given in Google’s supplemental brief filed earlier this evening, the Court
22 should reject Oracle’s “collective work” argument, because Oracle did not register the Java 2 SE
23 platform as a collective work. Google’s April 25 Copyright Brief, Dkt. No. 982, at 6-7. If,
24 however, the Court accepts Oracle’s “collective work” argument, then Google is entitled to
25 judgment as a matter of law of non-infringement of each of the component parts of the registered
26 works, because Oracle has not proved authorship of the constituent elements. *See id.* at 7-9.

27 Thus, even assuming the Court accepts Oracle’s “collective work” argument, the failure to
28 prove authorship of any constituent elements precludes Oracle from seeking relief except
regarding the selection, coordination and arrangement of the individual component parts of the

1 Java platform works.

2 In sum, if the Court accepts Oracle’s “collective work” argument, then Google is entitled
3 to a judgment as a matter of law of non-infringement of each of the component parts of the
4 registered works, because Oracle has not proved authorship of the constituent elements. First,
5 Oracle could not argue infringement with respect to any literal copying of code. Second, Oracle
6 could argue that the structure, sequence and organization of the 37 API packages is infringed, but
7 only to the extent that its argument did not rely on anything “inside” any of those API packages.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Google respectfully requests that the Court grant Google
10 judgment as a matter of law on the above sections of Count VIII of Oracle’s Amended Complaint.

11 Dated: April 25, 2012

KEKER & VAN NEST LLP

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