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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

**GOOGLE'S RESPONSE TO ORDER TO
SUPPLEMENT**

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

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SUPPLEMENTAL DISCLOSURE

In response to the Court's August 20, 2012 Order to Supplement (Dkt. 1238), Google again states that neither it nor its counsel has paid an author, journalist, commentator or blogger to report or comment on any issues in this case. Pursuant to the Court's clarifications in the Order to Supplement, the required disclosure does not include advertising revenue, disclosed experts, or gifts to universities. *Id.* at 1-2. It does, however, include (a) "all commenters known by Google to have received payments as consultants, contractors, vendors, or employees"; and (b) employee-commenters at organizations who receive money from Google. *Id.* With that in mind, Google provides the following supplemental disclosure.

As Google indicated in its initial Response (Dkt. 1237) Google supports a wide range of individuals and organizations, many of whom regularly comment on issues relevant to technology, often taking positions adverse to Google. *See, e.g.,* <http://www.google.com/publicpolicy/transparency.html>. Google has conducted a reasonable and diligent search, and has identified specific individuals and organizations in this supplemental disclosure who have commented on the issues in this case. Google did not pay for comments from any of the commenters listed in this disclosure. Nor did Google cite or rely on any of these commenters in its briefing in this case.¹

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I. CONSULTANTS, CONTRACTORS, VENDORS, OR EMPLOYEES.

Besides the specific individuals listed below, Google is not aware of any other consultants, contractors, vendors, or employees having commented on the litigation. Google did not pay for comments from any of these commenters.

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A. William Patry

William Patry is currently a Google employee, and was a Google employee during the pendency of the lawsuit. In 1996, well over a decade before this lawsuit was filed, Mr. Patry authored an article entitled *Copyright and Computer Programs: It's All in the Definition*, 14

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¹ Google referenced Jonathan Band's book, *Interfaces on Trial 2.0* (MIT Press 2011), in its April 3, 2012 Copyright Liability Trial Brief. As explained in Section II.B., below, Mr. Band's book is not a "comment" on this case—it was accepted for publication before Oracle filed this lawsuit.

1 Cardozo Arts & Ent. L.J. 1. Oracle cited Mr. Patry's article in its April 3, 2012 Brief Regarding
2 Copyright Issues (Dkt. 853).

3 **B. Timothy Bray**

4 Tim Bray is currently a Google employee, and was a Google employee during the
5 pendency of the lawsuit. On August 12, 2010, Mr. Bray wrote a post on his personal Twitter
6 account in response to Oracle's filing of the lawsuit. *See* Ex. A (available at
7 <https://twitter.com/timbray/status/21023407881>). In that post Mr. Bray noted that he was
8 speaking only for himself as an individual. *Id.*

9 **C. Bruce Perens**

10 Bruce Perens served as a consulting expert related to the lawsuit for Google. Mr. Perens
11 commented on the lawsuit during its pendency, but before being engaged by Google. *See* Ex. B
12 ("Oracle Sues Google For Infringing Java Patents," available at
13 <http://web.archive.org/web/20110104025930/http://perens.com/blog/d/2010/8/13/32/>); Ex. C
14 ("Oracle v. Google Java Lawsuit - Rationale Becoming More Clear," available at
15 <http://web.archive.org/web/20110104031315/http://perens.com/blog/d/2010/8/13/33/>); *see also*
16 (<http://news.slashdot.org/story/10/08/13/0255205/oracle-sues-google-for-infringing-java-patents>).

17 **D. Prof. Mark Lemley**

18 Professor Mark Lemley serves as outside counsel to Google in unrelated cases, as does the
19 law firm at which he is a partner: Durie Tangri.²

20 Prof. Lemley provided commentary for press reports related to the lawsuit. For example,
21 Prof. Lemley was quoted in a San Francisco Chronicle article by James Temple dated April 25,
22 2012. *See* Ex. D (available at [http://www.sfgate.com/business/article/Oracle-Google-case-shows-](http://www.sfgate.com/business/article/Oracle-Google-case-shows-patent-system-flaws-3507618.php)
23 [patent-system-flaws-3507618.php](http://www.sfgate.com/business/article/Oracle-Google-case-shows-patent-system-flaws-3507618.php)). Prof. Lemley was also quoted in a May 7, 2012 article by
24 Brendan Bailey in the Mercury News. *See* Ex. E (available at
25 http://www.mercurynews.com/business/ci_20566834/google-oracle-trial-verdict-ruling-
26

27 ² Google does not interpret the Court's initial Order nor the Order to Supplement as requiring a
28 response regarding Google's counsel in the litigation.

1 [copyright-jury-mistrial?IADID=Search-www.mercurynews.com-www.mercurynews.com](http://www.mercurynews.com/story/2012/05/07/93195/mixed_ruling_in_oracle_google_infringemen)). And
2 Prof. Lemley provided commentary regarding the lawsuit for a May 7, 2012 KQED report by Cy
3 Musiker. *See* Ex. F (text available at
4 http://www.kqed.org/news/story/2012/05/07/93195/mixed_ruling_in_oracle_google_infringemen
5 [t_case?category=bay+area](http://www.kqed.org/news/story/2012/05/07/93195/mixed_ruling_in_oracle_google_infringemen)).

6 Prof. Lemley also provided commentary via his personal Twitter account. For example,
7 on May 7, 2012, Prof. Lemley posted a comment regarding the copyright verdict. *See* Ex. G
8 (available at <https://twitter.com/marklemley/statuses/199605924862771200>). On May 23, 2012,
9 Prof. Lemley also re-tweeted another Twitter post related to an interview with the foreperson for
10 the jury in this lawsuit. *See* Ex. H (available at
11 <https://twitter.com/marklemley/statuses/205429756366307331>)

12 **E. James Gosling**

13 James Gosling left Oracle America, Inc. in April 2010, before the filing of the lawsuit.
14 Mr. Gosling was employed by Google from March 2011 to August 2011. Mr. Gosling maintains
15 a personal blog: <http://nighthacks.com/roller/jag/>. Google is not aware of Mr. Gosling blogging
16 about the lawsuit during his employment at Google. Out of an abundance of caution, because Mr.
17 Gosling was at one time paid by Google (as a Google employee), Google notes that Mr. Gosling
18 did blog about the lawsuit before he was employed by Google, *see, e.g.*, Ex. I
19 (http://nighthacks.com/roller/jag/entry/the_shit_finally_hits_the). Mr. Gosling also blogged about
20 the lawsuit after his employment with Google ended. Specifically, during trial, Mr. Gosling
21 wrote a blog post about the case. *See* Ex. J (available at
22 http://nighthacks.com/roller/jag/entry/my_attitude_on_oracle_v). And Mr. Gosling also
23 commented about the outcome of the trial. *See* Ex. K (available at
24 http://nighthacks.com/roller/jag/entry/ovg_it_s_finally_almost). Google does not know whether
25 and to what extent Mr. Gosling may have been receiving compensation from Oracle during the
26 pendency of the lawsuit under the terms of any agreement between Mr. Gosling and Oracle.
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F. Timothy B. Lee

1 Timothy Lee is a former engineering intern at Google. He left Google in late August
2 2010, shortly after Oracle filed the lawsuit. Mr. Lee has been writing for the website Ars
3 Technica since late 2010, and began writing about this lawsuit in 2011. At that time he was no
4 longer employed (or being paid) by Google. Mr. Lee's articles about this lawsuit include recent
5 articles about the Court's orders seeking disclosure of the parties' relations with commentators.
6 *See* Ex. L ("Judge: Google didn't follow 'show your shills' order," Aug. 20, 2012, available at
7 <http://arstechnica.com/tech-policy/2012/08/judge-google-didnt-follow-show-your-shills-order/>);
8 Ex. M ("Oracle, Google still bickering over paid shills long after trial," Aug. 17, 2012, available
9 at <http://arstechnica.com/tech-policy/2012/08/shill-count-oracle-1-google-0/>); Ex. N ("With anti-
10 shill order, Google/Oracle judge enters 'uncharted territory,'" Aug. 7, 2012, available at
11 [http://arstechnica.com/tech-policy/2012/08/with-anti-shill-order-googleoracle-judge-enters-
12 uncharted-territory/](http://arstechnica.com/tech-policy/2012/08/with-anti-shill-order-googleoracle-judge-enters-uncharted-territory/)); and Ex. O ("Name your shills,' judge orders Oracle, Google," Aug. 7,
13 2012, available at [http://arstechnica.com/tech-policy/2012/08/name-your-shills-judge-orders-
14 oracle-google/](http://arstechnica.com/tech-policy/2012/08/name-your-shills-judge-orders-oracle-google/)). Mr. Lee's articles about the lawsuit also include commentary regarding the
15 Court's requests for further briefing regarding copyrightability issues. *See* Ex. P ("Oracle v.
16 Google judge asks for comment on EU court ruling," May 3, 2012, available at
17 [http://arstechnica.com/tech-policy/2012/05/oracle-google-judge-asks-for-comment-on-eu-court-
18 ruling/](http://arstechnica.com/tech-policy/2012/05/oracle-google-judge-asks-for-comment-on-eu-court-ruling/)).

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20 Mr. Lee has also published posts via his personal Twitter account. For example, on
21 August 7, 2012, Mr. Lee re-tweeted a post linking to his Ars Technica article "'Name your shills,'
22 judge orders Oracle, Google." *See* Ex. Q (available at
23 <https://twitter.com/arstechnica/status/232927734421143552>). Subsequently, Mr. Lee posted that
24 he might be on Google's list of disclosed persons because he finished his internship for Google
25 shortly after Oracle filed this lawsuit. *See* Ex. R (available at
26 <https://twitter.com/binarybits/status/232936371529060352>). In a separate post on Twitter that
27 same day Mr. Lee noted that, while he had received some money from Google while in graduate
28 school, he had received no money from Google since becoming a full-time journalist. *See* Ex. S

1 (available at <https://twitter.com/binarybits/status/233008099500380160>). On August 17, 2012,
2 Mr. Lee also re-tweeted a Twitter post authored by Paul Alan Levy. *See* Ex. T (available at
3 <https://twitter.com/paulalanlevy/status/238020508682174464>). On August 8, 2012, Mr. Lee
4 posted a message on Twitter that quoted from a Twitter post by Mr. Levy. *See* Ex. U (available at
5 <https://twitter.com/binarybits/status/233332071257501696>).

6 **II. EMPLOYEE-COMMENTERS AT ORGANIZATIONS WHO RECEIVE MONEY** 7 **FROM GOOGLE**

8 Besides the specific individuals listed below, Google is not aware of any other employee-
9 commenters having commented on the litigation. Google did not pay for comments from any of
10 these commenters.

11 **A. Computer and Communications Industry Association**

12 Oracle's falsely suggests that Ed Black of the Computer and Communications Industry
13 Association ("CCIA") was acting under the influence of Google money when he wrote a column
14 stating the position that APIs are not copyrightable. Oracle and its counsel had to have known
15 that CCIA's position on APIs pre-dated Google's membership in CCIA—and in fact predated
16 Google's incorporation in 1998.

17 Mr. Black has publicly stated that Google did not ask him to write in support of its
18 position, and that CCIA's position that APIs are not copyrightable "goes back to the 1990s." *See*
19 Ex. V ("Google: No Paid Bloggers Here, Your Honor," Aug. 17, 2012, available at
20 <http://allthingsd.com/20120817/google-no-paid-bloggers-here-your-honor/?mod=googlenews>).

21 In fact, in December 1995, CCIA, with Mr. Black on brief, joined an amicus brief filed by the
22 American Committee for Interoperable Systems ("ACIS") in the Supreme Court case *Lotus v.*
23 *Borland*, arguing that interface specifications are not copyrightable. Ex. W (amicus brief cover
24 page). The counsel of record on that brief was Peter M.C. Choy, who at the time was a Deputy
25 General Counsel for Sun Microsystems. *Id.* Mr. Choy was also chairman of the ACIS. Ex. W-1
26 (November 5, 1992 letter from Sun). Sun was an ACIS member and "play[ed] a leading role" in
27 the organization. *Id.* at 1. ACIS's Statement of Principles, as attached to the November 5, 1992
28 letter, stated: "The rules or specifications according to which data must be organized in order to

1 communicate with another program or computer, i.e., interfaces and access protocols, are not
 2 protectable expression under copyright law.” *Id.* at 4. Oracle too was an ACIS member. *Id.* at 5;
 3 *see also* Ex. V (All Things Digital article dated Aug. 17, 2012). Professor Paul Goldstein, who
 4 was also on the ACIS amicus brief, was then, as he is now, of counsel at Morrison & Foerster.³
 5 Ex. W (amicus brief cover page).

6 The CCIA has commissioned studies by Mike Masnick, CEO of Floor64. *See*
 7 <http://www.floor64.com/about.php>. Mr. Masnick has commented on the case on the TechDirt
 8 website and on his personal friendfeed.com account. *See* Ex. X (available at
 9 [http://www.techdirt.com/articles/20120523/11050519050/boom-jury-says-no-patent-](http://www.techdirt.com/articles/20120523/11050519050/boom-jury-says-no-patent-infringement-google-oracle-case.shtml)
 10 [infringement-google-oracle-case.shtml](http://www.techdirt.com/articles/20120523/11050519050/boom-jury-says-no-patent-infringement-google-oracle-case.shtml) and at [http://friendfeed.com/mmasnick/a3a94012/jury-](http://friendfeed.com/mmasnick/a3a94012/jury-google-did-not-infringe-on-oracle-patents)
 11 [google-did-not-infringe-on-oracle-patents](http://friendfeed.com/mmasnick/a3a94012/jury-google-did-not-infringe-on-oracle-patents)).

12 **B. Jonathan Band**

13 Likewise, Oracle falsely suggests that Jonathan Band’s book *Interfaces on Trial 2.0* was
 14 influenced by Google money. Here, too, Oracle and its counsel had to have known that its
 15 accusations were off base.

16 Mr. Band has publicly stated that *Interfaces on Trial 2.0* was accepted for publication in
 17 2009—before Oracle acquired Sun Microsystems, and before the complaint in the case at bar was
 18 filed. Ex. V (All Things Digital article dated Aug. 17, 2012). Moreover, much of the book was
 19 based on even older articles, in some cases with other Morrison & Foerster lawyers as co-authors.
 20 *Id.*; *see also* *Interfaces on Trial 2.0* at 50 n.100 (subsection based on 1996 article by Mr. Band
 21 and Noah Levine, then a Morrison & Foerster summer associate); *id.* at 64 n.144 (subsection
 22 based on 1999 article by Mr. Band and Taro Isshiki, then a Morrison & Foerster associate); *see*
 23 *also id.* at 22 n.3, 34 n.46, 37 n.50 56 n.117 & 60 n.132 (subsections based on 1995, 1996, 2000
 24 and 2006 articles by Mr. Band).

25 In addition, as the title suggests and as is confirmed in the introduction, *Interfaces on Trial*
 26 *2.0* is a follow-up to a previous book by Mr. Band and his co-author. The prior book, *Interfaces*
 27

28 ³ The brief lists Professor Goldstein’s affiliation with Stanford Law School.

1 on *Trial: Intellectual Property and Interoperability in the Global Software Industry*, was
2 published in 1995, years before the case at bar was filed. In the acknowledgements to that book,
3 the authors thank, among others, Oracle’s lead counsel Michael Jacobs, as well as then Sun
4 Microsystems Deputy General Counsel Peter Choy, and Professor Goldstein. *See Interfaces on*
5 *Trial: Intellectual Property and Interoperability in the Global Software Industry* at xiii. At the
6 time, Mr. Band was a Morrison & Foerster partner. *Id.* at 361.⁴

7 C. Electronic Frontier Foundation

8 The Electronic Frontier Foundation (“EFF”) is a non-profit organization whose mission is
9 to “defend[] free speech, privacy, innovation, and consumer rights,” *see*
10 <https://www.eff.org/about>, with long-standing public views on the importance of interoperability.
11 *See, e.g.,* <https://www.eff.org/cases/blizzard-v-bnetd>. Google has contributed to the EFF for
12 years before the complaint in the case at bar was filed.

13 Michael Barclay, now a volunteer fellow for the Electronic Frontier Foundation,
14 commented on the case on his blog, IP Duck.⁵ *See* Ex. Y (available at
15 <http://ipduck.blogspot.com/2012/05/judge-alsup-rules-that-java-apis-are.html>); Ex. Z (available at
16 <http://ipduck.blogspot.com/2012/05/phase-one-verdict-in-oracle-v-google.html>). Mr. Barclay’s
17 interest in the copyrightability of software interfaces, however, long predates his association with
18 EFF, and in fact predates Google’s existence—Mr. Barclay represented Borland in *Lotus v.*
19 *Borland*. Ex. AA (Borland’s Supreme Court merits brief).

20 Julie Samuels is a Staff Attorney at the EFF focusing on intellectual property issues. *See*
21 <https://www.eff.org/about/staff/julie-samuels>. In that capacity, Ms. Samuels frequently
22 comments on intellectual property cases of note, including this case. *See* Ex. BB (“No
23 Copyrights on APIs: Judge Defends Interoperability and Innovation,” May 31, 2012, available at
24 [https://www.eff.org/deeplinks/2012/05/no-copyrights-apis-judge-defends-interoperability-and-](https://www.eff.org/deeplinks/2012/05/no-copyrights-apis-judge-defends-interoperability-and-innovation)
25 [innovation](https://www.eff.org/deeplinks/2012/05/no-copyrights-apis-judge-defends-interoperability-and-innovation)); Ex. CC (“Oracle v. Google and the Dangerous Implications of Treating APIs as

26 _____
27 ⁴ His co-author worked for Fujitsu.

28 ⁵ Mr. Barclay, before retiring, was a partner at Wilson Sonsini Goodrich & Rosati, which represents Google in various matters, but not the case at bar.

1 Copyrightable,” May 7, 2012, available at [https://www.eff.org/deeplinks/2012/05/oracle-v-](https://www.eff.org/deeplinks/2012/05/oracle-v-google-and-dangerous-implications-treating-apis-copyrightable)
2 [google-and-dangerous-implications-treating-apis-copyrightable](https://www.eff.org/deeplinks/2012/05/oracle-v-google-and-dangerous-implications-treating-apis-copyrightable)); Ex. DD (“Oracle v. Google
3 Shows the Folly of U.S. Software Patent Law,” April 23, 2012, available at
4 <http://www.wired.com/wiredenterprise/2012/04/opinion-samuels-google-oracle/>); Ex. EE (“Could
5 an Oracle Win Against Google Blow Up the Cloud?,” May 7, 2012, available at
6 http://www.wired.com/wiredenterprise/2012/05/oracle_clou/); Ex. FF (“What’s at stake in Oracle
7 v. Google?,” May 11, 2012, available at
8 http://www.computerworld.com.au/article/424370/what_stake_oracle_v_google_/#closeme); Ex.
9 GG (“Legal experts decipher Oracle-Google Verdict,” May 7, 2012, available at
10 http://news.cnet.com/8301-1001_3-57429590-92/legal-experts-decipher-oracle-google-verdict/);
11 Ex. HH (“Google Beats Oracle Patent Claim,” May 23, 2012, available at
12 [http://www.informationweek.com/software/operating-systems/google-beats-oracle-patent-](http://www.informationweek.com/software/operating-systems/google-beats-oracle-patent-claim/240000926)
13 [claim/240000926](http://www.informationweek.com/software/operating-systems/google-beats-oracle-patent-claim/240000926)).

14 **D. Public Knowledge**

15 Public Knowledge is a non-profit organization whose mission is to “preserv[e] the
16 openness of the Internet and the public’s access to knowledge; promot[e] creativity through
17 balanced copyright; and uphol[d] and protect[t] the rights of consumers to use innovative
18 technology lawfully.” See <http://www.publicknowledge.org/about>. Google has contributed to
19 Public Knowledge for years before the complaint in the case at bar was filed. Public Knowledge
20 has commented on the case. See Ex. II (available at
21 <http://www.publicknowledge.org/blog/copyright-compatibility>); Ex. JJ (available at
22 <http://www.publicknowledge.org/blog/gpl-does-not-depend-copyrightability-apis>).

23 **E. Center for Democracy and Technology**

24 Jon Miller is at the Center for Democracy and Technology (“CDT”) as a 2012 Google
25 Public Policy Fellow. His fellowship focuses on digital copyright, government surveillance, and
26 cybersecurity policy. On June 13, 2012, Mr. Miller authored a blog post on the CDT website
27 commenting on the outcome of the lawsuit. See Ex. KK (“Oracle v. Google: A Win for Software
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1 Everywhere,” available at [https://www.cdt.org/blogs/cdt/1306oracle-v-google-win-software-](https://www.cdt.org/blogs/cdt/1306oracle-v-google-win-software-everywhere)
2 [everywhere](https://www.cdt.org/blogs/cdt/1306oracle-v-google-win-software-everywhere)). Google is not aware of any other posts or commentary by Mr. Miller.

3 **F. Lauren Weinstein at Vortex Technology**

4 Lauren Weinstein is affiliated with Vortex Technology, an organization that has
5 conducted research for Google. Mr. Weinstein has commented on the case on his personal
6 Google+ feed. *See, e.g.*, Ex. LL (available at
7 <https://plus.google.com/s/Lauren%20weinstein%20%26%20google%20%26%20oracle>).

8 **G. Competitive Enterprise Institute**

9 Competitive Enterprise Institute (“CEI”) is “a non-profit public policy organization
10 dedicated to advancing the principles of limited government, free enterprise, and individual
11 liberty.” *See* <http://cei.org/about-cei>. Google has contributed to CEI for years before the
12 complaint in the case at bar was filed. CEI has commented about the case. *See* Ex. MM
13 (available at <http://cei.org/citations/apple-samsung-chiefs-pick-their-marbles-and-go-home>).

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16 Dated: August 24, 2012

KEKER & VAN NEST LLP

17 By: /s/ Robert A. Van Nest
18 ROBERT A. VAN NEST

19 Attorneys for Defendant
20 GOOGLE INC.