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ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE AMERICA, INC. Plaintiff, v. GOOGLE, INC. Defendant.	Case No. CV 10-03561 WHA **AMENDED COMPLAINT FOR PATENT AND COPYRIGHT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff Oracle America, Inc., by and through its attorneys, alleges as follows:

PARTIES

1. Oracle America, Inc. ("Oracle America") is a corporation organized under the laws of the State of Delaware with its principal place of business at 500 Oracle Parkway, Redwood City, California 94065. Oracle America does business in the Northern District of California.

2. Upon information and belief, Defendant Google, Inc. ("Google") is a corporation organized under the laws of the State of Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google does business in the Northern District of California.

JURISDICTION AND VENUE

3. This is an action for patent and copyright infringement arising under the patent and copyright laws of the United States, Titles 35 and 17, United States Code. Jurisdiction as to these claims is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in the Northern District of California under 28 U.S.C. §§ 1391 and 1400(b).

5. This Court has personal jurisdiction over Google. Google has conducted and does conduct business within the State of California and within this judicial district.

6. Google, directly or through intermediaries, makes, distributes, offers for sale or license, sells or licenses, and advertises its products and services in the United States, the State of California, and the Northern District of California.

INTRADISTRICT ASSIGNMENT

7. This is an Intellectual Property Action to be assigned on a district-wide basis pursuant to Civil Local Rule 3-2(c).

BACKGROUND

8. Oracle Corporation ("Oracle") is one of the world's leading technology companies, providing complete, open, and integrated business software and hardware systems. On January 27, 2010, Oracle acquired Sun Microsystems, Inc. ("Sun"). Sun is now Oracle America, a

subsidiary of Oracle. Oracle America continues to hold all of Sun's interest, rights, and title to the patents and copyrights at issue in this litigation.

9. One of the most important technologies Oracle acquired with Sun was the Java platform. The Java platform, which includes code and other documentation and materials, was developed by Sun and first released in 1995. The Java platform is a bundle of related programs, specifications, reference implementations, and developer tools and resources that allow a user to deploy applications written in the Java programming language on servers, desktops, mobile devices, and other devices. The Java platform is especially useful in that it insulates applications from dependencies on particular processors or operating systems. To date, the Java platform has attracted more than 6.5 million software developers. It is used in every major industry segment and has a ubiquitous presence in a wide range of computers, networks, and devices, including cellular telephones and other mobile devices. Sun's development of the Java platform resulted in many computing innovations and the issuance to Sun of a substantial number of important patents.

10. Oracle America is the owner by assignment of United States Patents Nos. 6,125,447; 6,192,476; 5,966,702; 7,426,720; RE38,104; 6,910,205; and 6,061,520, originally issued to Sun. True and correct copies of the patents at issue in this litigation are included as Exhibits A-G.

11. Oracle America owns copyrights in the code, documentation, specifications, libraries, and other materials that comprise the Java platform. Oracle America's Java-related copyrights are registered with the United States Copyright Office, including those attached as Exhibit H.

12. Google's Android competes with Oracle America's Java as an operating system and software development platform for cellular telephones and other mobile devices. The Android operating system software "stack" consists of Java applications running on a Java-based object-oriented application framework, and core libraries running on a "Dalvik" virtual machine (VM) that features just-in-time (JIT) compilation. Google actively distributes Android (including

without limitation the Dalvik VM and the Android software development kit) and promotes its use by manufacturers of products and applications.

13. Android (including without limitation the Dalvik VM and the Android software development kit) and devices that operate Android infringe one or more claims of each of United States Patents Nos. 6,125,447; 6,192,476; 5,966,702; 7,426,720; RE38,104; 6,910,205; and 6,061,520.

14. On information and belief, Google has been aware of Sun's patent portfolio, including the patents at issue, since the middle of this decade, when Google hired certain former Sun Java engineers.

15. On information and belief, Google has purposefully, actively, and voluntarily distributed Android and related applications, devices, platforms, and services with the expectation that they will be purchased, used, or licensed by consumers in the Northern District of California. Android has been and continues to be purchased, used, and licensed by consumers in the Northern District of California. Google has thus committed acts of patent infringement within the State of California and, particularly, within the Northern District of California. By purposefully and voluntarily distributing one or more of its infringing products and services, Google has injured Oracle America and is thus liable to Oracle America for infringement of the patents at issue in this litigation pursuant to 35 U.S.C. § 271.

COUNT I

(Infringement of the '447 Patent)

16. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

17. On September, 26, 2000, United States Patent No. 6,125,447, ("the '447 patent") entitled "Protection Domains To Provide Security In A Computer System" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '447 patent. A true and correct copy of the '447 patent is attached as Exhibit A to this Complaint.

18. Google actively and knowingly has infringed and is infringing the '447 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '447 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '447 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '447 patent pursuant to 35 U.S.C. § 271.

COUNT II

(Infringement of the '476 Patent)

19. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

20. On February 20, 2000, United States Patent No. 6,192,476, ("the '476 patent") entitled "Controlling Access To A Resource" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '476 patent. A true and correct copy of the '476 patent is attached as Exhibit B to this Complaint.

21. Google actively and knowingly has infringed and is infringing the '476 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '476 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '476 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '476 patent pursuant to 35 U.S.C. § 271.

COUNT III

(Infringement of the '702 Patent)

22. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

23. On October 12, 1999, United States Patent No. 5,966,702, ("the '702 patent") entitled "Method And Apparatus For Preprocessing And Packaging Class Files" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '702 patent. A true and correct copy of the '702 patent is attached as Exhibit C to this Complaint.

24. Google actively and knowingly has infringed and is infringing the '702 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '702 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '702 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '702 patent pursuant to 35 U.S.C. § 271.

COUNT IV

(Infringement of the '720 Patent)

25. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

26. On September 16, 2008, United States Patent No. 7,426,720, ("the '720 patent") entitled "System And Method For Dynamic Preloading Of Classes Through Memory Space Cloning Of A Master Runtime System Process" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '720 patent. A true and correct copy of the '720 patent is attached as Exhibit D to this Complaint.

27. Google actively and knowingly has infringed and is infringing the '720 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '720 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '720 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '720 patent pursuant to 35 U.S.C. § 271.

COUNT V

(Infringement of the '104 Patent)

28. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

29. On April 29, 2003, United States Patent No. RE38,104, ("the '104 patent") entitled "Method And Apparatus For Resolving Data References In Generate Code" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '104 patent. A true and correct copy of the '104 patent is attached as Exhibit E to this Complaint.

30. Google actively and knowingly has infringed and is infringing the '104 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '104 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '104 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '104 patent pursuant to 35 U.S.C. § 271.

COUNT VI

(Infringement of the '205 Patent)

31. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

32. On June 21, 2005, United States Patent No. 6,910,205, ("the '205 patent") entitled "Interpreting Functions Utilizing A Hybrid Of Virtual And Native Machine Instructions" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '205 patent. A true and correct copy of the '205 patent is attached as Exhibit F to this Complaint.

33. Google actively and knowingly has infringed and is infringing the '205 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that Google's conduct is lawful. Google has also induced and contributed to the infringement of the '205 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '205 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '205 patent pursuant to 35 U.S.C. § 271.

COUNT VII

(Infringement of the '520 Patent)

34. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

35. On May 9, 2000, United States Patent No. 6,061,520, ("the '520 patent") entitled "Method And System for Performing Static Initialization" was duly and legally issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and interest in and to the '520 patent. A true and correct copy of the '520 patent is attached as Exhibit G to this Complaint.

36. Google actively and knowingly has infringed and is infringing the '520 patent with knowledge of Oracle America's patent rights and without reasonable basis for believing that

Google's conduct is lawful. Google has also induced and contributed to the infringement of the '520 patent by purchasers, licensees, and users of Android, and is continuing to induce and contribute to the infringement of the '520 patent by purchasers, licensees, and users of Android. Google's acts of infringement have been and continue to be willful, deliberate, and in reckless disregard of Oracle America's patent rights. Google is thus liable to Oracle America for infringement of the '520 patent pursuant to 35 U.S.C. § 271.

COUNT VIII

(Copyright Infringement)

37. Oracle America hereby restates and realleges the allegations set forth in paragraphs 1 through 15 above and incorporates them by reference.

38. As noted in paragraph 11 above, Oracle America owns copyrights in the code, documentation, specifications, libraries, and other materials that comprise the Java platform.

39. Google's Android infringes Oracle America's copyrights in the Java platform, and Google infringes Oracle's exclusive rights under copyright by reproducing and distributing Android and inducing others to reproduce and distribute Android or the code contained within it.

40. Android includes infringing class libraries and documentation. Approximately one third of Android's Application Programmer Interface (API) packages (available at http://developer.android.com/reference/packages.html) are derivative of Oracle America's copyrighted Java API packages (available at http://download-llnw.oracle.com/javase/1.5.0/-docs/api/ and http://download-llnw.oracle.com/javase/1.4.2/docs/api/) and corresponding documents. The infringed elements of Oracle America's copyrighted work include Java method and class names, definitions, organization, and parameters; the structure, organization and content of Java class libraries; and the content and organization of Java's documentation. Examples of this copying are illustrated in Exhibit I to this complaint. In at least several instances, Android computer program code also was directly copied from copyrighted Oracle America code. For example, as may be readily seen in Exhibit J, the source code in Android's "PolicyNodeImpl.java" class is nearly identical to "PolicyNodeImpl.java" in Oracle America's Java, not just in name, but in the source code on a line-for-line basis.

41. Google has distributed Android to many companies interested in the mobile device market, including the members of the Open Handset Alliance, with the understanding and intention that those companies would distribute Android to developers and end-users, all with the purpose of encouraging and promoting the creation and execution of Android software applications. Users of Android must copy and use infringing Java class libraries, or works derived therefrom, to manufacture and use functioning Android devices, in violation of Oracle's copyrights. Such use is not licensed. Google has thus induced, caused, and materially contributed to the infringing acts of others by encouraging, inducing, allowing and assisting others to copy and distribute infringing works.

42. On information and belief, Google's direct and induced infringements are and have been knowing and willful.

43. By this unlawful copying, use, and distribution, Google has violated Oracle America's exclusive rights under 17 U.S.C. § 106.

44. Google has realized unjust profits, gains and advantages as a proximate result of its infringement.

45. Google will continue to realize unjust profits, gains and advantages as a proximate result of its infringement as long as such infringement is permitted to continue.

46. Oracle America is entitled to an injunction restraining Google from engaging in any further such acts in violation of the United States copyright laws. Unless Google is enjoined and prohibited from infringing Oracle America's copyrights, inducing others to infringe Oracle America's copyrights, and unless all infringing products and advertising materials are seized, Google will continue to intentionally infringe and induce infringement of Oracle America's registered copyrights.

47. As a direct and proximate result of Google's direct and indirect willful copyright infringement, Oracle America has suffered, and will continue to suffer, monetary loss to its business, reputation, and goodwill. Oracle America is entitled to recover from Google, in amounts to be determined at trial, the damages sustained and will sustain, and any gains, profits,

and advantages obtained by Google as a result of Google's acts of infringement and Google's use and publication of the copied materials.

PRAYER FOR RELIEF

WHEREFORE, Oracle America prays for judgment as follows:

A. Entry of judgment holding Google liable for infringement of the patents and copyrights at issue in this litigation;

B. An order permanently enjoining Google, its officers, agents, servants, employees, attorneys and affiliated companies, its assigns and successors in interest, and those persons in active concert or participation with it, from continued acts of infringement of the patents and copyrights at issue in this litigation;

C. An order that all copies made or used in violation of Oracle America's copyrights, and all means by which such copies may be reproduced, be impounded and destroyed or otherwise reasonably disposed of;

D. An order awarding Oracle America statutory damages and damages according to proof resulting from Google's infringement of the patents and copyrights at issue in this litigation, together with prejudgment and post-judgment interest;

E. Trebling of damages under 35 U.S.C. § 284 in view of the willful and deliberate nature of Google's infringement of the patents at issue in this litigation;

F. An order awarding Oracle America its costs and attorney's fees under 35 U.S.C. § 285 and 17 U.S.C. § 505; and

G. Any and all other legal and equitable relief as may be available under law and which the court may deem proper.

DEMAND FOR A JURY TRIAL

Oracle America demands a jury trial for all issues so triable.

Dated: October 27, 2010

By: /s/ Marc David Peters

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