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22 UNITED STATES DISTRICT COURT

23 NORTHERN DISTRICT OF CALIFORNIA

24 SAN FRANCISCO DIVISION

25 ORACLE AMERICA, INC.

Plaintiff,

26 v.

27 GOOGLE INC.

28 Defendant.

Case No. CV 10-03561 WHA

**PLAINTIFF ORACLE'S ~~PROPOSED~~
SUPPLEMENTAL COMPLAINT**

**Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup**

PLAINTIFF'S ~~PROPOSED~~
SUPPLEMENTAL COMPLAINT
CV 10-03561 WHA

Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiff Oracle America, Inc. (“Oracle”) hereby pleads this Supplemental Complaint. This Supplemental Complaint adds to and is not intended to supersede any allegation of the Amended Complaint.

SUPPLEMENTAL FACTS

A. Google’s Ongoing Infringement of Oracle’s Copyrights in the Java Platform.

1. From and after October 28, 2010, Google has continued to infringe Oracle’s copyrights in the Java platform. Since then, Google has released six versions of Android:

- Gingerbread (released Dec. 2010);
- Honeycomb (released Feb. 2011);
- Ice Cream Sandwich (released Oct. 2011);
- Jelly Bean (released July 2012);
- KitKat (released Oct. 2013); and
- Lollipop (released Nov. 2014).

These six named Android releases comprise approximately 40 major and minor releases of Android.

2. As with previous versions of Android, these six Android releases copy thousands of lines of source code from the Java platform, as well as the structure, sequence and organization (“SSO”) of that platform as reflected in the 37 Java API packages. The 37 Java API packages include: java.awt.font, java.beans, java.io, java.lang, java.lang.annotation, java.lang.ref, java.lang.reflect, java.net, java.nio, java.nio.channels, java.nio.channels.spi, java.nio.charset, java.nio.charset.spi, java.security, java.security.acl, java.security.cert, java.security.interfaces, java.security.spec, java.sql, java.text, java.util, java.util.jar, java.util.logging, java.util.prefs, java.util.regex, java.util.zip, javax.crypto, javax.crypto.interfaces, javax.crypto.spec, javax.net, javax.net.ssl, javax.security.auth, javax.security.auth.callback, javax.security.auth.login, javax.security.auth.x500, javax.security.cert, and javax.sql. Just as before, this copying constitutes copyright infringement.

3. Android will still not work without these Java API packages.

1 **B. The Android Platform Continues to Change and Expand.**

2 4. Since Oracle filed the Amended Complaint in October 2010, Android has become
3 the most widely used mobile platform in the world.

4 **1. Evolution of the Android Experience.**

5 5. While Android continues to be the mobile platform of choice for mobile phones
6 and tablets, in its latest Android releases Google has made a concerted effort to expand Android's
7 adoption into more non-handheld devices to make Android a truly ubiquitous platform.

8 6. ***Android Wear.*** Google is targeting Android for small-screen wearable devices,
9 including watches. Google provides software libraries and support to manufacturers and software
10 developers for wearable devices.

11 7. ***Android TV.*** Google is also targeting Android development on the largest screens
12 in the house. Google partners with manufacturers to make Android available on various
13 televisions, media players, and gaming consoles. Google also provides support for software
14 developers targeting their apps for televisions.

15 8. ***Android Auto.*** Google, as a founding member of the Open Automotive Alliance,
16 partners with automotive manufacturers and other technology companies to bring Android to
17 in-car displays. Google also provides support to software developers interested in developing for
18 Android Auto.

19 9. ***Other Android devices.*** Android is also starting to show up in other household
20 appliances, such as refrigerators, microwaves, washing machines, and air conditioners.

21 10. ***Google Play.*** Google has also reimagined Android's digital storefront. In March
22 2012, Google replaced the Android Market with Google Play, a single location that sells apps,
23 television shows, movies, music, books, newspapers, and magazines for Android users to
24 download and use on Android devices. Google Play boasts over 1.5 million apps, 18 million
25 songs, 5 million books, and 2,000 publications.

1 **2. Android Becomes the Dominant Mobile Platform.**

2 11. Since the filing of the Amended Complaint in late 2010, Android has experienced
3 significant growth in the phone and tablet markets. Between 2011 and 2014, Android's mobile
4 phone market share has increased, by some estimates, from nearly 40 percent to more than 80
5 percent. See <http://www.gartner.com/newsroom/id/1622614> (forecasting 38.5 percent market
6 share for Android in 2011) (dated April 7, 2011); <http://www.gartner.com/newsroom/id/2944819>
7 (83.1 percent market share for Android in 2014) (dated December 15, 2014). Android's share of
8 the tablet market has also experienced incredible growth, rising from a 20 percent market share in
9 2011 to nearly 70 percent in 2014. See <http://www.gartner.com/newsroom/id/1626414> (reporting
10 Google's tablet market share as 20 percent in 2011) (dated April 7, 2011);
11 <https://gigaom.com/2014/11/25/the-global-tablet-market-is-slowing-down-says-idc/> ("Android,
12 mirroring its success on smartphones, is still the dominant tablet operating system, accounting for
13 68 percent of the market—16 percent higher than last year.") (dated November 25, 2014).

14 12. There are now over one *billion* active monthly Android users and more than 8,000
15 devices running versions of Android.

16 13. The use of Android has also increased considerably. In 2011, users downloaded
17 10 billion Android applications from Android Market on a catalog of over 300,000 applications.
18 As of today, however, users have downloaded more than 50 billion applications from Google
19 Play on a catalog of more than 1.5 million apps.

20 14. Android use is also up as measured by advertising. By some accounts, Android is
21 now the top mobile advertising platform as measured by total advertising revenue (46 percent
22 market share) and by traffic (65 percent market share). See [http://www.cnet.com/news/android-
23 finally-beats-ios-in-mobile-ad-sales/](http://www.cnet.com/news/android-finally-beats-ios-in-mobile-ad-sales/) (reporting Android has three times the market share of
24 mobile ad traffic as compared to its nearest competitor, iOS) (dated May 5, 2015).

25 **C. Android Continues to Support Google's Revenue Generation.**

26 15. Android's explosive growth gives Google an expanded platform on which it can
27 support its core revenue generator: advertising.
28

1 16. Between 2010 and 2014, Google's annual total revenue more than doubled from
2 an already staggering \$29 billion to \$66 billion. The majority of this revenue came from
3 advertising. Google's annual net income also increased substantially over this time period, from
4 \$8.5 billion to \$14.4 billion.

5 17. Mobile search and advertising represent an increasingly important part of Google's
6 revenue generation. Google claims the majority of the search queries it processes in the United
7 States come from mobile devices. In addition, Google's advertising rates for mobile continue to
8 grow, even while non-mobile advertising rates decrease.

9 18. The Android platform plays a key role in generating Google's mobile advertising
10 revenue. Google provides software libraries and services for the Android platform that facilitate
11 mobile advertising. Google's Chrome web browser comes pre-installed with Android, and
12 Google is the default search engine for the browser. Android devices also come with Google
13 search pre-loaded. Each of these mechanisms helps Google control mobile advertising.

14 19. Android also helps Google generate revenue from other sources, including from
15 the Google Play store. Google receives a cut of the purchase price for paid Android apps and in-
16 app purchases sold through Google Play. Google also receives revenue for licensing other
17 Android-compatible digital content such as television shows, movies, music, books, newspapers,
18 and magazines sold through Google Play. Simply put, acquiring more users has meant more
19 usage of the Google Play store and more money for Google.

20 20. With an ever-expanding installed base of devices running Android and increasing
21 penetration of new and diverse markets, Google has maintained its dominance in the search
22 business and will continue to reap enormous profits from both its direct and indirect exploitation
23 of the infringing code.

24 **D. Google Is Destroying the Market for Java as a Mobile Platform.**

25 21. The infringing Android operating system has, in the time since the first trial, come
26 into widespread use, as outlined above, and has achieved a dominant market share of the world's
27 mobile devices, with some estimating that Android is now on more than 80 percent of
28

1 smartphones. None of these releases of Android would work without the infringing Java code.

2 22. Although all of these new Android versions are dependent upon the infringing
3 Java code, applications written for these new Android versions are not compatible with the Java
4 platform, because they do not run on the Java platform or on devices implementing the Java
5 platform. Similarly, applications written for the Java platform do not run on the versions of
6 Android made available since October 2010. Accordingly, given the widespread dominance
7 Android has achieved with its continued unauthorized use of the 37 Java API packages over the
8 past few years, Android has now irreversibly destroyed Java's fundamental value proposition as a
9 potential mobile device operating system by breaking the "write once, run anywhere" principle on
10 which Java was built.

11 23. Google's increasing domination of the mobile device market with Android and its
12 continuing failure and refusal to make Android compatible with the Java platform has destroyed
13 the potential value of a licensed derivative version of the Java platform in the mobile device
14 market.

15 **COUNT IX**

16 **(Copyright Infringement)**

17 24. Oracle hereby restates and realleges the allegations set forth in paragraphs 1
18 through 23 above and incorporates them by reference.

19 25. Oracle owns copyrights in the Java platform. These copyrights encompass the
20 SSO and declaring code for the 37 Java packages.

21 26. Google copied the SSO and declaring source code for the 37 Java packages into its
22 Android software. Google has done this for all versions of Android, including those that were
23 released or became widely used after the filing of the Amended Complaint in October 2010.
24 These versions of Android include Gingerbread, Honeycomb, Ice Cream Sandwich, Jelly Bean,
25 KitKat, and Lollipop.

26 27. Google reproduces and distributes Android to hardware manufacturers and
27 software developers, including those in the mobile device, television, and automotive markets,
28

1 with the intent that these manufacturers and developers further reproduce and distribute Android
2 to other developers and end-users. Through these activities, Google seeks to expand the reach of
3 Android by encouraging the development and use of software on the platform. Google's Android
4 distributions include Oracle's copyrighted materials from the 37 Java packages. Such use is not
5 licensed. Thus, Google has induced, caused, and materially contributed to the infringing acts of
6 others by encouraging, inducing, allowing and assisting others to copy and distribute infringing
7 works.

8 28. On information and belief, Google's direct and indirect infringements have been
9 and continue to be knowing and willful.

10 29. Google's reproduction and distribution of the Oracle's copyrighted materials from
11 the 37 Java Packages violate Oracle's exclusive rights under 17 U.S.C. § 106.

12 30. Google has realized and will continue to realize unjust profits, gains, and
13 advantages as a proximate result of its infringement.

14 31. Oracle is entitled to an injunction restraining Google from engaging in any further
15 such acts in violation of the United States copyright laws. Unless Google is enjoined and
16 prohibited from infringing Oracle's copyrights and inducing others to infringe Oracle's
17 copyrights, Google will continue to intentionally infringe and induce infringement of Oracle's
18 copyrights.

19 32. As a direct and proximate result of Google's direct and indirect willful
20 infringement, Oracle has suffered, and will continue to suffer, monetary loss to its business,
21 reputation, and goodwill. Oracle is entitled to recover from Google, in amounts to be determined
22 at trial, the damages Oracle sustained and will sustain, and any gains, profits, and advantages
23 obtained by Google as a result of its infringement.

24 **PRAYER FOR RELIEF**

25 A. Entry of judgment holding Google liable for infringement of the Java platform
26 copyrights at issue in this litigation;
27
28

1 B. An order permanently enjoining Google, its officers, agents, servants, employees,
2 attorneys and affiliated companies, its assigns and successors in interest, and those persons in
3 active concert or participation with it, from continued acts of infringement of the Java platform
4 copyrights;

5 C. An order awarding Oracle its actual damages resulting from Google's continued
6 infringement, as well as Google's profits attributable to the continuing infringement to the extent
7 not duplicative of actual damages, together with prejudgment and post-judgment interest;

8 D. An order awarding Oracle its costs and attorney's fees under 17 U.S.C. § 505; and

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

11 **JURY DEMAND**

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

13
14
15 Dated: August 6, 2015

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