

MORRISON & FOERSTER LLP
MICHAEL A. JACOBS (Bar No. 111664)
mjacobs@mofo.com
MARC DAVID PETERS (Bar No. 211725)
mdpeters@mofo.com
755 Page Mill Road
Palo Alto, CA 94304-1018
Telephone: (650) 813-5600
Facsimile (650) 494-0792

BOIES, SCHILLER & FLEXNER LLP
DAVID BOIES (*Pro Hac Vice* Pending)
dboies@bsfllp.com
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300
STEVEN C. HOLTZMAN (Bar No. 144177)
sholtzman@bsfllp.com
1999 Harrison St., Suite 900
Oakland, CA 94612
Telephone (510) 874-1000
Facsimile: (510) 874-1460

ORACLE CORPORATION
DORIAN DALEY (Bar No. 129049)
dorian.daley@oracle.com
DEBORAH K. MILLER (Bar No. 95527)
deborah.miller@oracle.com
MATTHEW M. SARBORARIA (Bar No. 211600)
matthew.sarboraria@oracle.com 500 Oracle Parkway
Redwood City, CA 94065
Telephone: (650) 506-5200
Facsimile: (650) 506-7114

Attorneys for Plaintiff
ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No.

**COMPLAINT FOR PATENT AND
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

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

2 **PARTIES**

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

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

10 **JURISDICTION AND VENUE**

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

14 4. Venue is proper in the Northern District of California under 28 U.S.C. §§ 1391 and
15 1400(b).

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

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

21 **INTRADISTRICT ASSIGNMENT**

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

24 **BACKGROUND**

25 8. Oracle Corporation ("Oracle") is one of the world's leading technology companies,
26 providing complete, open, and integrated business software and hardware systems. On January
27 27, 2010, Oracle acquired Sun Microsystems, Inc. ("Sun"). Sun is now Oracle America, a
28

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

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

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

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

23 12. Google's Android competes with Oracle America's Java as an operating system
24 software platform for cellular telephones and other mobile devices. The Android operating
25 system software "stack" consists of Java applications running on a Java-based object-oriented
26 application framework, and core libraries running on a "Dalvik" virtual machine (VM) that
27 features just-in-time (JIT) compilation. Google actively distributes Android (including without
28

1 limitation the Dalvik VM and the Android software development kit) and promotes its use by
2 manufacturers of products and applications.

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

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

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

19 **COUNT I**

20 **(Infringement of the '447 Patent)**

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

23 17. On September, 26, 2000, United States Patent No. 6,125,447, ("the '447 patent")
24 entitled "Protection Domains To Provide Security In A Computer System" was duly and legally
25 issued to Sun by the United States Patent and Trademark Office. Oracle America is the owner of
26 the entire right, title, and interest in and to the '447 patent. A true and correct copy of the '447
27 patent is attached as Exhibit A to this Complaint.
28

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.

1 **COUNT III**

2 **(Infringement of the '702 Patent)**

3 22. Oracle America hereby restates and realleges the allegations set forth in paragraphs
4 1 through 15 above and incorporates them by reference.

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

10 24. Google actively and knowingly has infringed and is infringing the '702 patent with
11 knowledge of Oracle America's patent rights and without reasonable basis for believing that
12 Google's conduct is lawful. Google has also induced and contributed to the infringement of the
13 '702 patent by purchasers, licensees, and users of Android, and is continuing to induce and
14 contribute to the infringement of the '702 patent by purchasers, licensees, and users of Android.
15 Google's acts of infringement have been and continue to be willful, deliberate, and in reckless
16 disregard of Oracle America's patent rights. Google is thus liable to Oracle America for
17 infringement of the '702 patent pursuant to 35 U.S.C. § 271.

18 **COUNT IV**

19 **(Infringement of the '720 Patent)**

20 25. Oracle America hereby restates and realleges the allegations set forth in paragraphs
21 1 through 15 above and incorporates them by reference.

22 26. On September 16, 2008, United States Patent No. 7,426,720, ("the '720 patent")
23 entitled "System And Method For Dynamic Preloading Of Classes Through Memory Space
24 Cloning Of A Master Runtime System Process" was duly and legally issued to Sun by the United
25 States Patent and Trademark Office. Oracle America is the owner of the entire right, title, and
26 interest in and to the '720 patent. A true and correct copy of the '720 patent is attached as Exhibit
27 D to this Complaint.
28

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.

1 **COUNT VI**

2 **(Infringement of the '205 Patent)**

3 31. Oracle America hereby restates and realleges the allegations set forth in paragraphs
4 1 through 15 above and incorporates them by reference.

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

10 33. Google actively and knowingly has infringed and is infringing the '205 patent with
11 knowledge of Oracle America’s patent rights and without reasonable basis for believing that
12 Google’s conduct is lawful. Google has also induced and contributed to the infringement of the
13 '205 patent by purchasers, licensees, and users of Android, and is continuing to induce and
14 contribute to the infringement of the '205 patent by purchasers, licensees, and users of Android.
15 Google’s acts of infringement have been and continue to be willful, deliberate, and in reckless
16 disregard of Oracle America’s patent rights. Google is thus liable to Oracle America for
17 infringement of the '205 patent pursuant to 35 U.S.C. § 271.

18 **COUNT VII**

19 **(Infringement of the '520 Patent)**

20 34. Oracle America hereby restates and realleges the allegations set forth in paragraphs
21 1 through 15 above and incorporates them by reference.

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

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

1 Google's conduct is lawful. Google has also induced and contributed to the infringement of the
2 '520 patent by purchasers, licensees, and users of Android, and is continuing to induce and
3 contribute to the infringement of the '520 patent by purchasers, licensees, and users of Android.
4 Google's acts of infringement have been and continue to be willful, deliberate, and in reckless
5 disregard of Oracle America's patent rights. Google is thus liable to Oracle America for
6 infringement of the '520 patent pursuant to 35 U.S.C. § 271.

7 **COUNT VIII**

8 **(Copyright Infringement)**

9 37. Oracle America hereby restates and realleges the allegations set forth in paragraphs
10 1 through 15 above and incorporates them by reference.

11 38. The Java platform contains a substantial amount of original material (including
12 without limitation code, specifications, documentation and other materials) that is copyrightable
13 subject matter under the Copyright Act, 17 U.S.C. § 101 *et seq.*

14 39. Without consent, authorization, approval, or license, Google knowingly, willingly,
15 and unlawfully copied, prepared, published, and distributed Oracle America's copyrighted work,
16 portions thereof, or derivative works and continues to do so. Google's Android infringes Oracle
17 America's copyrights in Java and Google is not licensed to do so.

18 40. On information and belief, users of Android, including device manufacturers, must
19 obtain and use copyrightable portions of the Java platform or works derived therefrom to
20 manufacture and use functioning Android devices. Such use is not licensed. Google has thus
21 induced, caused, and materially contributed to the infringing acts of others by encouraging,
22 inducing, allowing and assisting others to use, copy, and distribute Oracle America's
23 copyrightable works, and works derived therefrom.

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

26 42. By this unlawful copying, use, and distribution, Google has violated Oracle
27 America's exclusive rights under 17 U.S.C. § 106.
28

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

44. 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.

45. 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.

46. 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

1 proof resulting from Google's infringement of the patents and copyrights at issue in this litigation,
2 together with prejudgment and post-judgment interest;

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

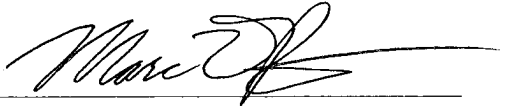
5 F. An order awarding Oracle America its costs and attorney's fees under 35 U.S.C.
6 § 285 and 17 U.S.C. § 505; and

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

9
10 **DEMAND FOR A JURY TRIAL**

11 Oracle America demands a jury trial for all issues so triable.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 Dated: August 12, 2010

By: 

3 MORRISON & FOERSTER LLP
4 MICHAEL A. JACOBS (Bar No. 111664)
5 mjacobs@mofo.com
6 MARC DAVID PETERS (Bar No. 211725)
7 mdpeters@mofo.com
8 755 Page Mill Road
9 Palo Alto, CA 94304-1018
10 Telephone: (650) 813-5600
11 Facsimile (650) 494-0792

12 BOIES, SCHILLER & FLEXNER LLP
13 DAVID BOIES (*Pro Hac Vice* Pending)
14 dboies@bsfllp.com
15 333 Main Street
16 Armonk, NY 10504
17 Telephone: (914) 749-8200
18 Facsimile: (914) 749-8300
19 STEVEN C. HOLTZMAN (Bar No. 144177)
20 sholtzman@bsfllp.com
21 1999 Harrison St., Suite 900
22 Oakland, CA 94612
23 Telephone (510) 874-1000
24 Facsimile: (510) 874-1460

25 ORACLE CORPORATION
26 MATTHEW M. SARBORARIA
27 (Bar No. 211600)
28 matthew.sarboraria@oracle.com
500 Oracle Parkway
Redwood City, CA 94065
Telephone: (650) 506-5200
Facsimile: (650) 506-7114

Attorneys for Plaintiff
ORACLE AMERICA, INC.