

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 rvannest@kvn.com
CHRISTA M. ANDERSON - # 184325
3 canderson@kvn.com
DANIEL PURCELL - # 191424
4 dpurcell@kvn.com
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

KING & SPALDING LLP
DONALD F. ZIMMER, JR. - #112279
fzimmer@kslaw.com
CHERYL A. SABNIS - #224323
csabnis@kslaw.com
101 Second Street, Suite 2300
San Francisco, CA 94105
Tel: 415.318.1200
Fax: 415.318.1300

7 KING & SPALDING LLP
SCOTT T. WEINGAERTNER
8 (Pro Hac Vice)
sweingaertner@kslaw.com
9 ROBERT F. PERRY
rperry@kslaw.com
10 BRUCE W. BABER (Pro Hac Vice)
1185 Avenue of the Americas
11 New York, NY 10036
Tel: 212.556.2100
12 Fax: 212.556.2222

IAN C. BALLON - #141819
ballon@gtlaw.com
HEATHER MEEKER - #172148
meekerh@gtlaw.com
GREENBERG TRAUIG, LLP
1900 University Avenue
East Palo Alto, CA 94303
Tel: 650.328.8500
Fax: 650.328.8508

13 Attorneys for Defendant
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-03561 WHA

**GOOGLE'S REPLY IN SUPPORT OF
MOTION FOR RULE 50(b) JUDGMENT
AS A MATTER OF LAW ON PORTIONS
OF COUNT VIII OF ORACLE'S
AMENDED COMPLAINT, OR, IN THE
ALTERNATIVE, FOR A NEW TRIAL**

Date: August 23, 2012
Time: 8:00 a.m.
Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

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I. INTRODUCTION

The Court should grant Google’s motion for Rule 50(b) judgment as a matter of law (“JMOL”), or in the alternative, for a new trial (Dkt. 1222). None of the arguments Oracle raises in its Opposition (Dkt. 1227) adds to the parties’ prior briefing on these issues or compels a different conclusion.

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II. ARGUMENT

A. The J2SE platform is the “work as a whole.”

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The J2SE platform is the work Oracle registered with the Copyright Office and the copyright in the J2SE platform is the copyright that Oracle accused Google of infringing in this case. Dkt. 36, Ex. H; *see also* TX 464 and 475. As a matter of law, the registered work is the “work as a whole.” Moreover, Oracle presented no evidence at trial that “[e]ach source code file in the Java platform” is “recognizable as a self-contained work.” Dkt. 1227 at 3:1-2. Thus, even if it were possible to subdivide a registered work, there is no basis in the record to subdivide the J2SE platform file-by-file into separate “works.”

For all the reasons stated in Google’s JMOL motion and its prior copyright briefs, (Dkt. 955 at 5:2-12:2, Dkt. 984 at 5:1-10, Dkt. 993 at 3:9-6:5, and Dkt. 1043 at n. 9), which are incorporated herein by reference, the complete J2SE platform is the “work as a whole” for the infringement analysis.

B. The rangeCheck function and the “decompiled files” are *de minimis* as a matter of law.

The rangeCheck function is *de minimis* as a matter of law when compared either to the millions of lines of code in the J2SE platform or to the 3,179 lines of code in the Arrays.java file.¹ Oracle’s reliance on Dr. Mitchell’s testimony that rangeCheck is “useful” to the library in which it is located and that the rangeCheck code “has some subtlety” is insufficient to establish quantitative or qualitative significance. *See Newton v. Diamond*, 388 F.3d 1189, 1195-97 (9th

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¹ As explained in Section II.A., above, rangeCheck and the “decompiled files” should be compared to the J2SE platform as a whole to determine whether any copying was *de minimis*.

1 Cir. 2004). Further, Oracle presented no evidence at trial that a computer programmer or
2 application developer would “recognize Google’s copying of rangeCheck.” Dkt. 1227 at 6:9.

3 The “decompiled files” are also *de minimis* as a matter of law. The files are a tiny fraction
4 of the code in the J2SE platform, and there is no evidence that they are qualitatively significant.

5 Therefore, for all the reasons stated in Google’s JMOL motion and prior copyright briefs
6 (Dkt. 955, 984, 993, 1007, and 1043), which are incorporated herein by reference, Google’s
7 JMOL motion should be granted.

8 **III. CONCLUSION**

9 For the foregoing reasons, Google’s motion for Rule 50(b) judgment as a matter of law,
10 or, in the alternative, for a new trial should be granted.

11 Dated: August 7, 2012

KEKER & VAN NEST LLP

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

14 Attorneys for Defendant
15 GOOGLE INC.