



FARELLA BRAUN + MARTEL LLP

Attorneys At Law

Russ Building / 235 Montgomery Street
San Francisco / CA 94104

T 415.954.4400 / F 415.954.4480
www.fbm.com

JOHN L. COOPER
jcooper@fbm.com
D 415.954.4410

October 28, 2011

The Honorable William Alsup
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: Oracle America, Inc. v. Google Inc., No. 3:10-CV-03561-WHA (N.D. Cal.)

Dear Judge Alsup:

I write on behalf of Dr. James Kearl, the independent damages expert appointed by the Court in this action pursuant to Rule 706 of the Federal Rules of Evidence. The purpose of this letter is to request an extension of the dates on which Dr. Kearl is to file his expert reports. This request is made in light of the Proposed Trial Plan issued by the Court on October 26, 2011, has been reviewed by counsel for the parties and they have no objection.

Dr. Kearl requests in the alternative, that the Court allow one of the following schedules:

1) Dr. Kearl prepare and file a single report on January 19, 2012 which will be in compliance with both paragraph 4 of the September 9, 2011 Order and paragraph 1 of the October 12, 2011 Order; or in the alternative,

2) In the event the Court desires that Dr. Kearl file two reports, on December 23, 2011 Dr. Kearl will file a first report in compliance with paragraph 4 of the September 9, 2011 Order and on January 19, 2012 will file a second report in compliance with paragraph 1 of the



The Honorable William Alsup
October 28, 2011
Page 2

October 12, 2011 Order. These reports will be based on data and information in the extant record; Dr. Kearl will not independently seek out and obtain data and information outside of the record in this matter.

This schedule was addressed at the October 19, 2011 hearing where it was resolved that on November 14, 2011 Dr. Kearl would file a first report in compliance with paragraph 4 of the September 9, 2011 order and on January 19, 2012 would file a second report in compliance with paragraph 1 of the October 12, 2011 order. These reports would be based on data and information in the extant record in this matter.

It is our understanding that the original schedule contemplated in the September 9, 2011 order has now been vacated due to the Court's criminal trial requirements. The Proposed Trial Plan issued by the Court on October 26, 2011 proposes a three phase trial, only the last phase of which would include damages that are the subject of Dr. Kearl's reports. That order requests responses to the proposed trial plan by November 18, which is 4 days after Dr. Kearl is scheduled to file his first report as resolved at the October 19, 2011 hearing. In light of this change it does not appear necessary or useful for Dr. Kearl to file his first report on November 14, 2011.

Dr. Kearl's reasons for requesting this extension include: 1) the record in this matter which will be considered in preparing his report is 22 million pages, much larger than was contemplated at the outset of this engagement; 2) the reports of the parties damages experts and rebuttal experts, as well as those of the technical experts, are each several hundreds of pages



The Honorable William Alsup
October 28, 2011
Page 3

long; 3) motions in limine are presently pending which address damages issues that Dr. Kearl must take into account in preparing his report; 4) as of this date the deposition of at least one rebuttal damages expert, Dr. Serwin who filed two reports, has not been taken or scheduled; 5) given that the schedule for this trial has been extended it does not appear necessary for Dr. Kearl to file his first report on November 14, and allowing the requested extensions will permit Dr. Kearl to provide more thorough and complete damages analysis in his reports.

Dr. Kearl respectfully requests the extensions of time in which to file his damages reports. The present request is not opposed by the parties. Dr. Kearl will file a motion making the present request if the Court so desires.

Sincerely yours,


John L. Cooper

JLC:br
27152\2838353.1