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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,
Plaintiff,

No. C 10-03561 WHA

v.

FINAL PRETRIAL ORDER

GOOGLE INC.,
Defendant.

FOR GOOD CAUSE and after a final pretrial conference, the Court issues the following final pretrial order:

1. This case shall go to a **JURY TRIAL** at **7:30 AM** on **A DATE ON OR AFTER MARCH 19, 2012, TO BE SELECTED**, and shall continue until completed on the schedule discussed at the conference. The issues to be tried shall be those set forth in the joint proposed pretrial order except to the extent modified by order *in limine*. This final pretrial order supersedes all the complaint, answer and any counterclaims, cross-claims or third-party complaints, *i.e.*, only the issues expressly identified for trial remain in the case.

2. All claims for relief arising out of any patent alleged in the complaint or any amended complaint shall be deemed merged into the claims already selected by plaintiff to be tried.

3. Rulings on the motions *in limine* shall be set forth in separate orders.

4. Except for good cause, each party is limited to the witnesses and exhibits disclosed in the joint proposed final pretrial order less any excluded or limited by an order *in limine*. Materials or witnesses used solely for impeachment need not be disclosed and may

1 be used, subject to the rules of evidence.

2 5. The stipulations of facts set forth in the joint proposed final pretrial order are
3 approved and binding on all parties.

4 6. The parties shall follow the Court's current *Guidelines for Trial and*
5 *Final Pretrial Conference*, separately provided and available on the Internet at
6 <http://www.cand.uscourts.gov>, which guidelines are incorporated as part of this order.

7 7. The trial shall be trifurcated as follows:

8 **JURY SELECTION:** To the potential jury pool, the Court will send out a written inquiry
9 along the lines of the item previously supplied. This will go out with the summons. The
10 ultimate purpose will be to excuse venirepersons for hardship without their having to travel to
11 court, at least in clear-cut cases deserving to be excused. Those not so excused will appear on
12 the first day of trial for jury selection. There will be no written substantive questionnaire. Jury
13 selection will take about two hours. Counsel will be permitted to voir dire at the end of the
14 Court's voir dire. A jury of 12 will be sworn. The same jury will decide all phases of the trial.

15 **OPENING STATEMENT:** Each side shall have one hour for opening statement. This may
16 address all issues in the case or simply Phase One issues, as counsel wish, subject to rulings
17 specifically limiting mention of topics or evidence to the jury.

18 **PHASE ONE:** Phase One will be directed to all liability and defenses for all copyright
19 claims but not for any other issues. To the extent it would constitute a copyright defense or go
20 to a copyright liability issue, both sides may present more general "Java" evidence in Phase One
21 (or Phase Two), such as implied license, laches, equitable estoppel, and waiver. Each side will
22 have sixteen hours of evidence time for Phase One. At the end of the Phase One evidence, we
23 will have closings (time limits to be determined), the jury will be instructed and the jury will
24 deliberate and render a special verdict on all copyright liability issues. The Court is inclined to
25 ask the jury for an advisory verdict on all equitable defenses, although the Court itself may
26 possibly (or not) postpone ruling on equitable defenses until after Phase Two.

27 **PHASE TWO:** The same jury will then return for Phase Two. Each side will
28 have 45 minutes for opening statement. In addition, we will show the jury the FJC video on the

1 patent system (this will not be charged against anyone's time limit). Phase Two will be directed
2 to all patent liability and defense issues, including any generalized defenses. This phase is
3 where the color-coded claim charts will be useful. Each side will have twelve hours of evidence
4 time. At the end of the Phase Two evidence, we will again have closings (time limits to be
5 determined), the jury will be instructed and the jury will deliberate and render a special verdict
6 on all patent liability issues.

7 **PHASE THREE (IF NECESSARY):** After openings of 45 minutes per side, all remaining
8 issues would be tried including damages and willfulness. Each side may have up to eight hours
9 of evidence time. Closings, instructions and verdict would then follow on those issues.

10 **GENERAL:** Unused time from an earlier phase may be banked and used by a side in a
11 following phase but counsel may not borrow time from a future phase. Evidence and
12 stipulations presented in an earlier phase will count as part of the trial record for all later phases
13 and may be referenced in openings and closings for later phases. No trial testimony, however,
14 will be video recorded. Witnesses will *not* be permitted to return to a subsequent phase to
15 repeat testimony already given by them in an earlier phase. The jury will have already heard it.
16 Witnesses may, however, return to provide new and fresh testimony on different points.
17 Witnesses may not give testimony on a subject relevant only to a later phase. Openings and
18 closings will not count against counsel's allotment of evidence time. Both direct and
19 cross-examination, however, *will* count against the allotment of evidence time. Evidence and
20 argument relevant solely to whether a permanent injunction should issue must be saved for a
21 subsequent proceeding, if necessary, after the jury trial.

22 Any objection to this order must be filed within seven calendar days and must be
23 specific and cite to legal authority.

24
25 **IT IS SO ORDERED.**

26
27 Dated: January 4, 2012.

28 
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE