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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 ORACLE AMERICA, INC.

12 Plaintiff,

13 v.

14 GOOGLE INC.

15 Defendant.  
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CASE NO. CV 10-03561 WHA

**STIPULATION AND ~~PROPOSED~~  
ORDER REGARDING '104 PATENT**

Judge: Honorable William H. Alsup

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**STIPULATION**

WHEREAS, the parties have continued to meet and confer regarding proposals for streamlining the trial, and have reached agreement regarding the '104 patent;

NOW THEREFORE THE PARTIES HEREBY STIPULATE AND AGREE as follows:


1. Google has agreed to withdraw its invalidity defense to the '104 patent.

2. The parties have agreed to the conditional stipulations regarding Oracle and Sun products practicing the '104 patent set forth in the Supplemental Joint Statement of February 21, 2012 (Dkt. 721). Specifically, if Oracle proves in Phase 2 that Google infringes the '104 patent, Google conditionally stipulates for purposes of Phase 3 (the damages phase) that the Oracle products identified in the 2/21/2012 Joint Statement practiced the asserted claims of the '104 patent during the relevant time period. In turn, Oracle conditionally stipulates for purposes of Phase 3 that Oracle and Sun did not mark the practicing products with the '104 patent during the relevant time period. The parties agree that these conditional stipulations relate only to Phase 3 and are triggered by a finding of patent infringement; the stipulations shall not be used as evidence or referred to in attorney argument in Phase 2 regarding patent liability.

**ORDER**

The foregoing stipulation is approved, and IT IS SO ORDERED.

Date: May 7, 2012.

  
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Honorable William H. Alsup  
Judge of the United States District Court

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Dated: May 6, 2012

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**ATTESTATION**

I, Marc David Peters, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] ORDER REGARDING '104 PATENT. In compliance with General Order 45, X.B., I hereby attest that Matthias A. Kamber has concurred in this filing.

Date: May 6, 2012

/s/ Marc David Peters