

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

-- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY--

Videotaped deposition of IAIN M. COCKBURN, PH.D.,
taken at the law offices of Boies, Schiller &
Flexner LLP, 1999 Harrison Street, Suite 900,
Oakland, California, commencing at 9:41 a.m.,
on Monday, October 17, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

PAGES 1 - 269

1 the book scanning issue. I don't know whether -- I
2 haven't seen the terms of a -- you know, the license
3 under -- you know, the terms under which Google shares
4 revenue from -- from its providing its users the ability
5 to search a whole bunch of copyrighted work. 11:54:00

6 In my mind as an economist, I would interpret
7 that as being a license, you know, which revolves revenue
8 sharing around intellectual property. Same thing with
9 content distribution deals in which I understand there's
10 revenue sharing, you know. 11:54:23

11 Q. BY MR. PURCELL: But, again, I'm talking
12 purely about a patent license where Google agrees to
13 provide some consideration to something in exchange for
14 rights to practice patents with no exploitation
15 component, no distribution deal. 11:54:44

16 Are you aware of Google ever agreeing to
17 revenue sharing in that context?

18 MS. RUTHERFORD: Objection.

19 THE WITNESS: No.

20 Q. BY MR. PURCELL: We've been talking a lot 11:54:53
21 about the starting point, whether 100 million or 28
22 million is better. I just, sort of, want to understand
23 what's your opinion as to what Google would have been
24 purchasing for that amount of money, whatever it ended up
25 being? 11:55:14

1 A. Google would have been paying for the right
2 to incorporate Sun's intellectual property and distribute
3 a Linux Java mobile stack under an Open Source license.

4 Q. Part of that component would have been a
5 license to a portfolio of Sun intellectual property? 11:55:49

6 A. That's correct.

7 Q. And that intellectual property portfolio
8 included patents; correct?

9 A. Yes. Again, I'd have to refresh my
10 recollection as to the precise terms in the contract, but 11:56:14
11 I understand the payment under such circumstances to be
12 payment for a bundle of -- of intellectual property,
13 including patents owned by Sun.

14 Q. Do you know how many Sun-owned patents were
15 contained in that bundle of intellectual property? 11:56:30

16 A. I don't know.

17 Q. Have you looked at any of the Sun-owned
18 patents contained in that bundle of intellectual property
19 other than the patents asserted in this lawsuit?

20 A. No. 11:56:45

21 Q. Do you know anything about the other
22 Sun-owned patents in that bundle, as far as what they
23 covered -- what functionality they covered?

24 MS. RUTHERFORD: Objection.

25 THE WITNESS: I'm not aware of any list of -- 11:56:59

1 of such patents. I've seen some numbers thrown around.
2 But I have not looked specifically at any patents other
3 than the ones that are in suit in this matter.

4 Q. BY MR. PURCELL: Have you made any attempt to
5 calculate the value to Google in the context of the -- 11:57:19
6 the April 2006 negotiations of the other Sun-owned
7 patents not at issue in this case?

8 A. I have not isolated the value of -- of those
9 other patents, no.

10 Q. What about the other elements of the bundle 11:57:42
11 of intellectual property rights, were there copyrights --
12 strike that. That's a terrible question. Let me start
13 again.

14 With respect to the bundle of intellectual
15 property rights that was part of the subject of the 11:58:02
16 negotiation between Sun and Google, did that bundle
17 include the rights to copyrighted Sun material?

18 A. It's my understanding that it does, yes.

19 Q. And do you have a sense of the scope of the
20 Sun copyrighted material at issue with respect to that 11:58:15
21 bundle?

22 A. Amongst other things, I think it includes
23 copyrighted source code. I understand that Sun claims a
24 copyright in the API's. You know, there may be -- there
25 may be other copyrighted material encapsulated by the -- 11:58:43

1 the terms of the proposed agreement.

2 Q. Have you attempted to value the other
3 copyrighted material included within the bundle that is
4 not asserted in this case?

5 A. No. My analysis supports apportioning the 11:59:06
6 value of -- of the entire bundle specifically into --
7 into two components, one of which is -- is that
8 associated with the patents-in-suit. Another reflects
9 the value of the copyrights, but I have not specifically
10 isolated the value of the other intellectual property. 11:59:36

11 Q. Are you sufficiently familiar with the
12 content of that other intellectual property that you
13 could estimate its value?

14 MS. RUTHERFORD: Objection.

15 THE WITNESS: Not as I sit here today. 11:59:56

16 Q. BY MR. PURCELL: If Google had gotten access
17 to Sun's copyrighted source code, that would have had
18 substantial economic value to Google; correct?

19 MS. RUTHERFORD: Objection.

20 THE WITNESS: It may have had substantial 12:00:10
21 economic value. It would depend upon what use they could
22 put it to.

23 Q. BY MR. PURCELL: Wouldn't having access to
24 Sun's copyrighted source code potentially have enabled
25 Google and Sun to jointly develop a mobile operating 12:00:25

1 platform more quickly?

2 MS. RUTHERFORD: Objection.

3 THE WITNESS: That's possible.

4 Q. BY MR. PURCELL: It would have avoided the
5 need for Google to write its own code, at least to some 12:00:36
6 extent, potentially; correct?

7 MS. RUTHERFORD: Objection.

8 THE WITNESS: It's certainly possible.

9 Q. BY MR. PURCELL: It might have allowed Google
10 to get a mobile operating platform to market more 12:00:45
11 quickly; correct?

12 A. Well, it's possible. I don't know that
13 it's -- it's guaranteed. Google may have had existing
14 code with equivalent functionality or the ability to
15 obtain it from a third party. 12:01:03

16 Q. Do you have any information suggesting that
17 Google did have the ability to obtain equivalent code
18 from a third party?

19 MS. RUTHERFORD: Objection.

20 THE WITNESS: I don't know either way. 12:01:19

21 Q. BY MR. PURCELL: The bundle of intellectual
22 property rights that was part of the negotiation between
23 Sun and Google, in addition to patents and copyrights, it
24 also included the rights to use Sun's Java trademark;
25 correct? 12:01:47

1 A. Correct.

2 Q. Have you attempted to calculate the value of
3 the use of Sun's Java trademark with respect to the
4 overall bundle of rights?

5 A. No. 12:01:57

6 MS. RUTHERFORD: Objection.

7 Q. BY MR. PURCELL: Do you see any value in --
8 in a new mobile operating platform having the Java brand
9 over a new entrant that did not?

10 MS. RUTHERFORD: Objection to form. 12:02:10

11 THE WITNESS: There may be some value.
12 Whether it's substantial or -- or minimal, I don't know
13 that I can offer an opinion.

14 Q. BY MR. PURCELL: Are you familiar with Sun's
15 business practices as far as its efforts to protect the 12:02:31
16 Java trademark?

17 MS. RUTHERFORD: Objection to form.

18 THE WITNESS: Generally.

19 Q. BY MR. PURCELL: What's your understanding
20 of -- 12:02:42

21 MS. RUTHERFORD: Give me a second to object.
22 Okay?

23 THE WITNESS: Sorry.

24 MR. PURCELL: Sure.

25 Q. What's your understanding of Sun's general 12:02:47

1 business practices with regard to protecting the Java
2 trademark?

3 A. Sun does not allow licensees to use the
4 trademark, you know, unless they -- unless they have
5 demonstrated that they're using a compatible version of 12:03:16
6 Java, specifically one which has passed the TCK.

7 Q. And TCK stands for -- is it technology
8 compatibility test? I'm not trying to trick you. I can
9 never remember whether it's technology or testing
10 compatibility kit? 12:03:39

11 A. I'm in the same place that you are,
12 Mr. Purcell. I believe it is testing and compatibility
13 kit.

14 Q. Okay.

15 A. But it may even have changed over time. 12:03:46

16 Q. But in any event, the TCK is a Sun test
17 designed to measure compatibility between a licensee's
18 implementation of Java and the Sun Java standard;
19 correct?

20 A. That's my understanding. 12:03:59

21 Q. So leaving aside the bundle of intellectual
22 property rights we've been discussing, the patents
23 copyrights and trademark, would the proposed deal between
24 Sun and Google have delivered any other value to Google
25 in exchange for the payment Google was proposing to make 12:04:19

1 to Sun?

2 MS. RUTHERFORD: Objection to form.

3 THE WITNESS: I'm sorry, can you restate the
4 question?

5 Q. BY MR. PURCELL: Sure. Maybe I can make it a 12:04:31
6 little more simple.

7 The deal between Google and Sun under
8 negotiating -- negotiation in April of 2006 would have
9 provided Google with additional value beyond just a
10 license to a bundle of intellectual property; correct? 12:04:44

11 A. Well, the value to Google is, as you have
12 suggested, at least potentially made up of a number of --
13 of factors, one is potentially the right to -- to access
14 certain source code or deploy certain Sun technology, the
15 ability to access the base of developers writing Java 12:05:28
16 code. To the extent that they saw some value in the
17 trademark, they might have been -- viewed that as part of
18 the considerations under the agreement.

19 I think there is likely to be some value to
20 them in terms of being able to capitalize upon Sun's 12:05:56
21 expertise and -- and many years of investment in
22 developing Java and fine-tuning that technology to work
23 in the mobile environment. There may well be other
24 benefits that they would receive in exchange for -- for
25 the payments associated with this agreement. 12:06:24

1 Q. In your analysis, do you attempt to value the
2 other benefits that Google would have received apart from
3 the intellectual property license?

4 A. Independently of -- of the negotiations
5 around this agreement, no. 12:06:44

6 Q. What about in the context of the negotiations
7 around this agreement? In that context, did you attempt
8 to value the other benefits apart from the intellectual
9 property license to Google?

10 A. I don't know that they're -- they're easily 12:07:00
11 economically separable. Like many of these agreements,
12 it involves a transfer of technology, which is
13 accomplished by -- by a license to intellectual property.

14 Q. But a license to intellectual property
15 doesn't necessarily give the licensee the right to 12:07:26
16 leverage the expertise that the licensor has previously
17 gained in -- in implementing the technology previously;
18 correct?

19 MS. RUTHERFORD: Objection to form.

20 THE WITNESS: It depends on the terms of the 12:07:41
21 license agreement.

22 Q. BY MR. PURCELL: I understand that, but in
23 and of itself, a license to intellectual property doesn't
24 also give the licensee the right to leverage the
25 licensor's expertise in using the licensed technology? 12:07:59

1 A. I would characterize it as a method of
2 capturing the value to Sun of compatibility and control.

3 Q. All right. We'll get to that in a second.

4 Other than those three bases, the litigation
5 premium, fragmentation and then as you put it, the value 14:17:01
6 to Sun as capturing compatibility and control, is there
7 any other basis for the upward adjustment that you make
8 in the patent royalty from just below \$30 million to just
9 above 200 million in your initial report?

10 A. Maybe I misheard your question. But those 14:17:19
11 would be the -- those would be the three factors which
12 would lead me to an upward adjustment.

13 Q. Now, looking at the litigation premium first,
14 you state that you're not able to quantify that
15 precisely; correct? 14:17:54

16 A. Correct.

17 Q. And why is that?

18 A. Well, I think to make the correct adjustment
19 here, one would have to have a good sense of the ex-ante
20 probability of success in litigation. 14:18:12

21 The literature on this has -- has focused, if
22 you like, on -- on average -- on average values and the
23 types of the sizable litigation premium, which would be
24 suggested by, for example, the -- the -- what the data
25 would allow you to infer about -- infer for a randomly 14:18:37

1 chosen patent or a randomly chosen litigation, what the
2 probability of -- of the patentee establishing liability
3 would be.

4 Those studies point us to the general
5 magnitude of such adjustments. I am personally hesitant 14:18:56
6 to apply them in a situation such as this, where I think
7 it's really unclear what the ex-ante probability of a
8 finding of liability would be.

9 Q. Is it fair to say that you used the
10 litigation premium only as a reasonableness check to 14:19:19
11 support your conclusion that an upward adjustment of the
12 patent royalty is justified?

13 A. Litigation -- the potential for a litigation
14 premium, which -- you know, which could be significant
15 but which I believe is difficult to reliably -- was 14:19:37
16 difficult for me to reliably assess, is one of the
17 factors that I would take into account within the Georgia
18 Pacific framework as suggesting -- as suggesting upward
19 pressure on a reasonable royalty. Yeah.

20 Q. And is that the only way in which you use the 14:20:04
21 litigation premium in your analysis, to suggest upward
22 pressure on the royalty?

23 A. I believe so.

24 Q. The next basis for your upward adjustment is
25 fragmentation. And I believe you say you're not able to 14:20:26

1 precisely quantify the impact of fragmentation either;
2 correct?

3 A. At this point in time, I think it --
4 fragmentation -- fragmentation is something which I
5 believe is a very substantial consideration here and that 14:20:50
6 Oracle is likely to suffer severe economic harm as a
7 result of Google's actions fragmenting the -- the Java
8 ecosystem.

9 I think some parts of this might, in the
10 fullness of time, you know, be possible to quantify with 14:21:18
11 some precision. But it is a -- the type of phenomenon
12 which is very difficult to quantify with any -- with any
13 precision.

14 Q. And you haven't attempted to do that here;
15 correct? 14:21:40

16 A. I have not.

17 Q. Is it your opinion that Oracle has already
18 suffered damages as the result of fragmentation caused by
19 Android?

20 A. Yes, it is. I think the economic processes 14:21:50
21 which lead to the -- the substantial harm caused by
22 fragmentation are already in progress. The cat's out of
23 the bag, if you like.

24 Everything I think we know in economics about
25 the platform competition and the economic processes which 14:22:14

1 drive this, suggest that, you know, the -- the processes
2 in motion, they're very difficult to reverse and will
3 lead to -- to very substantial harm to Oracle's economic
4 interests as the -- as the sponsor of the Java platform.

5 Q. And how could that harm to Oracle's economic 14:22:47
6 interest be demonstrated?

7 A. Well, we might in 20 year's time be able to
8 conduct a retrospective study -- I imagine it would make
9 a very good Ph.D. thesis -- to go back and look at
10 what -- you know, what will have happened between 2008 14:23:10
11 and at some point in the future.

12 And, you know, there may be enough data for
13 such a retrospective study to be able to go back and say,
14 "Well, this is -- this is what happened to Java. You
15 know, this is what happened to Oracle's ability to 14:23:32
16 capture value from the platform. And this is what led to
17 this, that or the other, business outcome," which I
18 can't, sitting here, predict.

19 But retrospectively, one will be able to
20 reliably attribute to the forking or the fragmentation of 14:23:53
21 the platform by Android.

22 Q. Do we need to wait 20 years to make that
23 determination?

24 A. Well, I don't know how many years. But, you
25 know, at some indeterminate point in the future, when the 14:24:08

1 Android network.

2 These examples I -- I referred to earlier
3 strongly point to these processes being almost impossible
4 to reverse. Once the market is tipped, it's almost
5 impossible to tip it back. 14:29:44

6 Q. Other than Exhibit E10, which measures
7 developer activity on message boards, do you rely on any
8 other data in support of a conclusion that developer
9 interest has shifted from Java to Android?

10 A. I don't rely on any other piece of data 14:30:10
11 specifically. I rely upon my -- my years of studying
12 this phenomenon, the extensive economic literature which
13 describes these kinds of dynamics, and, you know, the
14 empirical studies which have pointed to these examples of
15 the death of one platform through forking or 14:30:31
16 fragmentation and the emergence of another.

17 Q. Let's assume that Google had created a
18 non-infringing competing platform. Wouldn't it still be
19 possible in that circumstance that developers would move
20 from the Java platform to the non-infringing competitive 14:30:49
21 Android platform?

22 A. Well, it's possible. It's possible. But I
23 think it's -- you know, you have to understand the
24 economic forces which would -- which would drive this.

25 If the developers had a reasonable basis to 14:31:07

1 very large numbers of applications being available, and
2 very rapid adoption by consumers.

3 Q. Have you done anything to investigate the
4 extent to which when Apple launched its mobile iPhone
5 platform, any mobile Java developers migrated over and 14:45:32
6 started writing apps for the iPhone?

7 A. As I said, I haven't seen any convincing data
8 on that point.

9 Q. Now, Android includes more functionality than
10 is included in Oracle's Java mobile product; correct? 14:45:49

11 A. I understand it's, if you like, a superset
12 of -- of Java mobile.

13 Q. Android is what is referred to as a full
14 stack operating system. Have you ever heard that term?

15 A. Yes. 14:46:08

16 Q. So it includes -- it includes actually an
17 operating system at the bottom level. It includes
18 middleware. It includes features that run on the
19 middleware.

20 A. Yes. 14:46:17

21 Q. Whereas Java mobile is mostly confined to
22 middleware? Is that your understanding or --

23 A. Generally, yes.

24 Q. So in that sense, Android doesn't -- strike
25 that. 14:46:32

1 would want to assessed the range of choices, market and
2 technology options that were available to the
3 participants.

4 The reason this is something which is very
5 hard to do ex-ante and may not be possible to do 14:52:33
6 ex-post -- that's why I was suggesting it could be a
7 Ph.D. thesis, topic -- is that it may in the end be
8 possible to evaluate all of this data, when it's all
9 finally in and the process -- the economic processes I'm
10 talking about have played out -- and arrive at a 14:52:55
11 definitive conclusion, what we can't do, I think at this
12 moment in time, is -- is come up with a reliable
13 quantification of -- of how for fragmentation.

14 It's very clear to me that it's substantial
15 and likely to be impossible to reverse. Putting a dollar 14:53:22
16 figure on it today I think is -- is not something that
17 can be done.

18 Q. How can you be sure that there even is any
19 harm from fragmentation?

20 A. Listen to the participants in this case. 14:53:39
21 Oracle are very concerned, and I think have a very
22 reasonable basis for being concerned, about the impact of
23 Java on their business. They're seeing it in their
24 customers jumping ship. There's -- you know, the record
25 supports, you know, a substantial and ongoing and likely 14:54:06

1 accelerating impact of Android on Oracle's Java business.

2 Q. Is there anything in particular you can point
3 me to? I mean, I'm familiar with Oracle's assertions in
4 the case, but is there anything in particular you can
5 point me to as evidence of harm to Oracle currently from 14:54:32
6 fragmentation?

7 A. Well, I cite a number of -- of -- I don't
8 recall the specific references here. I think the --
9 the -- I wish I can add to my previous answers to your
10 questions in this line. 14:55:27

11 MR. PURCELL: All right. Let's take a break.

12 THE VIDEOGRAPHER: Going off the record. The
13 time is 2:55 p.m.

14 (Recess.)

15 THE VIDEOGRAPHER: Back on the record. The 15:08:55
16 time is 3:08 p.m.

17 Q. BY MR. PURCELL: Dr. Cockburn, staying with
18 the fragmentation issue for a moment, you're familiar
19 with the phrase "write once, run anywhere"?

20 A. Yes, I am. 15:09:06

21 Q. And what's your understanding of what that
22 phrase means?

23 A. Well, the phrase refers to the property of
24 the Java platform, and it's built in by design that a
25 great amount of Java code, or indeed, all of the code for 15:09:27

1 be the only company that could offer a commercial
2 implementation of Android?

3 MS. RUTHERFORD: Objection to form.

4 THE WITNESS: There was no agreement.

5 Q. BY MR. PURCELL: Was there ever an agreement 15:39:38
6 on that term between Sun and Google during negotiations?

7 MS. RUTHERFORD: Objection to form.

8 THE WITNESS: I don't think so.

9 Q. BY MR. PURCELL: When you say "commercial
10 implementation," are you distinguishing between that and 15:39:49
11 zero price implementations?

12 MS. RUTHERFORD: Objection to form.

13 THE WITNESS: I'm referring to -- to an
14 implementation which is licensed under the kind of
15 commercialize which Sun had used and continues to use 15:40:08
16 with its licensing of Java ME.

17 Q. BY MR. PURCELL: But there are other
18 companies that are able to offer commercial
19 implementations of Java ME; correct?

20 A. What do you mean specifically? 15:40:27

21 Q. Well, OEMs, wireless carriers, there are
22 other companies that offer commercial implementations of
23 Java ME; correct?

24 A. They do so under license from Sun, is my
25 understanding. So it's a distinction. I think maybe 15:40:51

1 where the issue here is the difference between Java ME as
2 I think you were describing as a piece of middleware,
3 Java ME can be implemented on many different platforms,
4 and certainly it's the case, I think, that OEMs or
5 carriers may be understood to be distributed -- you know, 15:41:16
6 distributing a commercial implementation and doing so on
7 top of that platform.

8 So I think, for example, Java ME runs on
9 Blackberry. There's a big distinction between that and
10 Android, which is a -- what we were describing earlier as 15:41:33
11 a full stack.

12 Q. I think you said earlier that your only basis
13 for quantifying the upward adjustment of patent royalties
14 is the third upward adjustment, the value to Sun of
15 compatibility and control; is that correct? 15:42:09

16 A. Yes.

17 MR. PURCELL: I'd like to mark these two
18 documents as Exhibits 509 and 510.

19 (Exhibits Google 509 and 510 were marked
20 for identification.) 15:42:42

21 MR. PURCELL: So Exhibit 509 is a March 20,
22 2006 email from Kathleen Knopoff to the Armstrong core
23 email group, Bates-Stamped OAGoogle 0100166873.

24 And then Exhibit 510 is a presentation with
25 the Bates-Stamp OAGoogle 0100166874 through 66899. 15:43:06

1 MS. RUTHERFORD: I think it's important to
2 mention that 509 and 510 were attached to each other.

3 MR. PURCELL: Right. I assume that that's
4 the case.

5 Q. Dr. Cockburn, looking at -- and feel free to 15:43:30
6 look at Exhibit 509 if you want, the email -- but looking
7 at 510, the presentation, is this document the basis for
8 your quantification of the upward adjustment for the
9 value of control and compatibility to Sun?

10 A. It's the basis for that part of my 15:43:48
11 adjustment, which, if you like, is a lump sum. I also --
12 I also account for compatibility control as regards of
13 lifting a cap on -- on the revenue sharing part of the
14 agreement. This is the principal part, yes.

15 Q. BY MR. PURCELL: Is there any other basis for 15:44:18
16 that principal part of your upward adjustment, other than
17 this document?

18 A. No. Other than -- other than my locating it
19 in the general context of the record and the other
20 evidence I considered, this is the specific document. 15:44:37

21 Q. Leaving aside your discussions with counsel,
22 which I can't get into, did you discuss this document
23 with anybody at Oracle prior to relying on it in your
24 expert report?

25 A. No. 15:44:49

1 You can infer -- you can infer that from the previous
2 page which talks about, you know, 235 million units in
3 fiscal '09. You could scale that down to, you know, help
4 you understand how many units were projected and how
5 quickly this product might have ramped up and received 15:57:59
6 acceptance.

7 Q. BY MR. PURCELL: Have you seen any other
8 document that would support a conclusion that if Project
9 Armstrong had gone forward, Sun could have got it to
10 market by the end of 2007? 15:58:09

11 MS. RUTHERFORD: Objection to form.

12 THE WITNESS: I'm not recalling a specific
13 document.

14 Q. BY MR. PURCELL: In looking at the numbers
15 for fiscal year 2009, the revenue number is 15:58:29
16 \$462.6 million; correct?

17 A. Yes.

18 Q. And the gross margin is \$428.0 million?

19 A. Yes.

20 Q. That's a profit margin of over 90 percent, 15:58:42
21 isn't it?

22 A. I'll accept your arithmetic.

23 Q. Are you aware of any other Sun or Oracle
24 business segment that generates a margin of that nature,
25 90 percent? 15:59:00

1 operating platform have required consumer marketing?

2 MS. RUTHERFORD: Object to the form.

3 THE WITNESS: Well, the customer here are
4 OEMs and carriers. In the global marketplace, you know,
5 the serious customers here would be measured in tens or 16:01:16
6 hundreds rather than millions or hundreds of millions.
7 The carriers and the OEMs are going to market to
8 consumers.

9 Q. BY MR. PURCELL: Now, looking for a second at
10 Exhibit 509, Kathleen Knopoff's March 20th, 2006 email? 16:01:36

11 A. Yes.

12 Q. It's your understanding that this email was
13 attached to and referring to the presentation we've been
14 discussing that's Exhibit 510?

15 A. Yes, that's my understanding. 16:01:51

16 Q. So Ms. Knopoff writes a number of things, but
17 number 3 in her email is the provisos that we gave them
18 are that the numbers will move as the business model is
19 more fully developed and that these numbers have not been
20 vetted bottoms up by customer. 16:02:11

21 Do you see that?

22 A. I see that.

23 Q. Have you ever seen another document that
24 revised or confirmed these projections in any way after
25 the business model was more fully developed? 16:02:20

1 A. No.

2 Q. Have you seen any documents that revised or
3 confirmed these projections after they were vetted
4 bottoms up by the customer?

5 A. No. It's my understanding the document was 16:02:30
6 prepared in February 2008 as part of the background for
7 the negotiations that were being conducted in late March
8 and early April, and that as those negotiations fell
9 apart, it doesn't surprise me that there's no subsequent
10 revision of this document. 16:02:54

11 Q. I think you said February of 2008. I think
12 you might have meant February of 2006?

13 A. I certainly meant to say 2006. I apologize
14 for misspeaking.

15 Q. No problem. 16:03:04

16 So just to be clear, you've never seen any
17 other iteration of this document that made projections
18 about potential revenue for Project Armstrong; correct?

19 A. That's correct.

20 Q. Let's turn to Exhibit 6 to your reply to the 16:03:29
21 Leonard report, which should be the very last page of the
22 document.

23 A. Okay.

24 Q. Now, Exhibit 6 to your reply to the Leonard
25 report, this calculates your current estimates of 16:04:12

1 Q. BY MR. PURCELL: When you're calculating the
2 value of compatibility and control to Sun, why do you use
3 as a proxy for that the projected Project Armstrong
4 profits?

5 A. Well, these place a lower bound, if you will, 16:13:32
6 on how Sun would, in my view, you know, place a monetary
7 value on compatibility and control provisions, you know,
8 as contemplated in the Project Armstrong negotiations.

9 There's certainly more value, you know, to
10 the extent that the compatibility and control revisions 16:13:54
11 protect other revenue streams or sustain other revenue
12 streams, that was certainly contemplated -- you know, we
13 spoke about the email from Mr. Nachi earlier today. It
14 was certainly contemplated there were going to be
15 opportunities to -- to -- substantial opportunities to 16:14:18
16 grow and expand these revenues.

17 But these provide, in my view, some concrete
18 evidence as to a minimum amount of money that Sun would
19 have required from the hypothetical license in order to
20 compensate them for loss of compatibility and control. 16:14:36

21 Q. Now, you calculate a separate damages figure
22 through September of 2011 in Exhibit 6; correct?

23 A. Correct.

24 Q. And that total damages figure before
25 adjustments is \$120.9 million? 16:14:56

1 it as a window, and it's important to -- to move towards
2 it if they're to -- to be able to compete.

3 Q. BY MR. PURCELL: During -- strike that.

4 Between the breakdown of Sun/Google
5 negotiations in April or May of 2006 and the announcement 17:42:35
6 of Android in November 2007, what, if anything, did Sun
7 do to build its own full stack mobile operating platform?

8 A. I don't know the extent to which they were
9 investing or actively engaged in this sort of thing, but
10 I think the record suggests that Android came of 17:42:56
11 something -- it was something of a surprise to Sun,
12 particularly the extent to which it incorporated Sun's
13 intellectual property and -- and, you know, would be a
14 direct competing, you know, product as a substitute for
15 something like Acadia. 17:43:20

16 Q. What's your basis for your statement that
17 Android came as a surprise to Sun?

18 A. Well, as I -- as I recall, the -- the record,
19 various people at Sun, it took a while for Sun to
20 appreciate how much of -- of Java technology -- how much 17:43:43
21 Java technology, Java ME and specific core libraries,
22 were actually present in the -- in the released version
23 of Android.

24 Q. Do you have an opinion as to whether Sun ever
25 would have granted a license to Google for an 17:44:06

1 incompatible version of Android?

2 MS. RUTHERFORD: Objection.

3 THE WITNESS: I can see circumstances under
4 which they would have been willing to -- to license an
5 incompatible implementation of Java. You know, if the 17:44:30
6 price is right.

7 So I wouldn't say never. I think they would
8 have been reluctant to do so. But it would depend very
9 much on the terms that were offered.

10 Q. BY MR. PURCELL: None of the actual 17:44:49
11 negotiations between Google and Sun in 2006 were for an
12 incompatible implementation of Java; correct?

13 A. The negotiations, as I understand them,
14 contemplated a compatible implementation.

15 Q. Neither party ever put an incompatible 17:45:05
16 implementation on the table in those negotiations;
17 correct?

18 A. Correct.

19 Q. Are you aware of any other licenses that Sun
20 has ever granted, any third party for an incompatible 17:45:14
21 implementation of Java?

22 A. Well, we were having a discussion earlier
23 about DoJa, which you were characterizing to me as
24 incompatible. I think from time to time Sun has been
25 willing to consider licensing its technology under, you 17:45:37

1 know, specific circumstances and allowing a degree of
2 compatibility to the extent it did not threaten the core
3 value proposition. That would be reasonable from a
4 business perspective.

5 Q. Other than the example of DoJa, can you think 17:45:53
6 of any other instances where Sun has been willing to
7 consider licensing an incompatible implementation of
8 Java?

9 A. Not that I recall sitting here.

10 Q. Are you aware of any instances of any kind 17:46:08
11 where Sun had ever licensed an incompatible
12 implementation of Java to a company that was competing
13 with Sun for customers?

14 MS. RUTHERFORD: Objection to form.

15 THE WITNESS: Sorry. Can you say that again? 17:46:27

16 Q. BY MR. PURCELL: Sure.

17 Are you aware of any instance where Sun has
18 ever --

19 A. Actually, will it be okay with you -- do you
20 mind if I take a quick break? I'm -- just a few minutes. 17:46:36
21 Or if you feel like there's a line of questioning you'd
22 like to complete, that's fine.

23 Q. I'm sorry. I just have a question pending,
24 so I'd like to get an answer to it.

25 A. Right. Sorry. 17:46:50

1 Q. No. I know this is a long day.

2 My question is: Are you aware of any
3 instances where Sun has ever offered to license or
4 licensed an incompatible implementation of Java to a
5 competitor? 17:47:00

6 MS. RUTHERFORD: Objection to form.

7 THE WITNESS: What do you mean by
8 "competitor"?

9 Q. BY MR. PURCELL: Somebody who's competing
10 with Sun for customers as opposed to a partner like 17:47:08
11 DoCoMo.

12 MS. RUTHERFORD: I can't think of one.

13 MR. PURCELL: All right. We can take a
14 break.

15 THE VIDEOGRAPHER: Going off the record. The 17:47:20
16 time is 5:47 p.m.

17 (Recess.)

18 THE VIDEOGRAPHER: Back on the record. The
19 time is 5:55 p.m.

20 Q. BY MR. PURCELL: Dr. Cockburn, just turning 17:55:21
21 back to Exhibit 510, the Project Armstrong business model
22 document?

23 A. Yes. Sorry, 5?

24 MS. RUTHERFORD: 510.

25 THE WITNESS: 510. Excuse me. Okay. 17:55:38

1 there's the upward adjustment, which is quantified in
2 Exhibit 510, the Project Armstrong document, and then
3 there's the apportionment percentage that you have given
4 to the copyrights based on the facts that you just
5 described. 18:03:31

6 Is that the complete basis of your copyright
7 license calculation?

8 MS. RUTHERFORD: Objection to form.

9 THE WITNESS: My copyright license
10 calculation is based upon my assessment of the value of 18:03:37
11 a -- the hypothetical license -- you know, I think I
12 referred to it in my report as the aggregate hypothetical
13 license to the whole package, and then there's an
14 apportionment percentage applied to that. And the
15 apportionment percentage is derived from the sources I 18:04:00
16 was -- we were just talking about.

17 Q. BY MR. PURCELL: I think you just repeated
18 back to me what I said in different words. I'm trying
19 to -- I'm trying --

20 MS. RUTHERFORD: Objection. 18:04:13

21 MR. PURCELL: Yeah, that's fine.

22 Q. I'm trying to figure out the complete basis
23 of your copyright license calculation. You started,
24 correct, with the Sun Google negotiations in 2006; right?

25 A. Yes. 18:04:24

1 Q. All right. And then you apportioned a
2 percentage of your starting point to the value of the
3 copyrights; correct?

4 A. Well, strictly speaking, I think, I began
5 with the starting point license, which we were referring 18:04:38
6 to as the \$100 million license, then I adjusted that
7 upwards to take into account the value of compatibility
8 and control as captured by the projections and financial
9 analysis in Exhibit 510.

10 I further uncap the -- the revenue sharing 18:05:08
11 contemplated in the starting point negotiation from
12 \$25 million but use the same 10 percent. That gives me
13 the value of the aggregate hypothetical license.

14 Q. And then you take 15 percent of that?

15 A. To that, I apply apportionment percentage. 18:05:29

16 Q. Which is 15 percent; correct?

17 A. Which, in my opinion, is 15 percent.

18 Q. All right. Jumping back for just a second to
19 your calculation of lost profits, with respect to the
20 Java ME licensing revenue for 2011, fiscal year 2011, you 18:05:48
21 used a projection for -- to calculate that number;
22 correct?

23 A. Yes, I rely upon a -- the document in which
24 Sun anticipate a 50-percent decline in Java ME licensing
25 revenues during fiscal 2011. 18:06:15

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3

4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all
10 objections made by counsel at the time of the examination
11 were recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel
17 for any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested in
19 the outcome thereof.

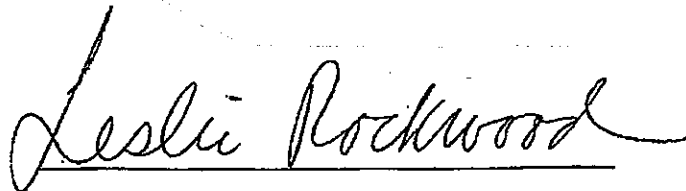
20 IN WITNESS WHEREOF, I have subscribed my name
21 this 18th day of October, 2011.

22

23

24

25



LESLIE ROCKWOOD, CSR. NO. 3462

J