

# Jury deals big blow to Oracle in Android case versus Google

Dan Levine, Reuters

In a case that examined whether computer language that connects programs and operating systems can be copyrighted, Oracle claimed Google's Android tramples on its intellectual property rights to the Java programming language.

Google argued it did not violate Oracle's patents and that Oracle cannot copyright certain parts of Java, an "open-source" or publicly available software language. In addition to finding for Google on patents, the jury foreman told reporters that the final vote on a key copyright issue earlier in the case had heavily favored Google. David Sunshine, a New York-based intellectual property lawyer who advises hedge funds, said the outcome of the Google trial was humbling for Oracle, which had it won, could have gained handsome payouts given the growing market for Android devices.

"It's a huge blow," Sunshine said.

For Oracle and its aggressive CEO Larry Ellison, the trial against Google over Java was the first of several scheduled this year against large competitors. Another trial is set to begin next week between Oracle and Hewlett-Packard Co over the Itanium microprocessor. The verdict was delivered on Wednesday in a San Francisco federal court. Oracle spokeswoman Deborah Hellinger said the company would continue to defend and uphold Java's unique functionality.

"Oracle presented overwhelming evidence at trial that Google knew it would fragment and damage Java," she said.

Attorneys for Oracle looked grim after the verdict, while Google lawyers smiled and shook hands. Google general counsel Kent Walker said the company felt it was important to send a message by taking the case to trial.

"We didn't want to back down when we felt the facts were on our side," Walker said in an interview with Reuters.

Although the jury found earlier that Oracle had proven copyright infringement for parts of Java, it could not unanimously agree on whether Google could fairly use that material.

Without a finding against Google on the fair use question, Oracle cannot recover damages on the bulk of its copyright claims. And U.S. District Judge William Alsup has not yet decided on several legal issues that could determine how a potential retrial on copyright would unfold, if at all.

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Jury foreman Greg Thompson, 52, said that at times he was the only holdout for Oracle on that fair use copyright question. When the jury finally declared itself deadlocked, the final vote count was 9-3 in favor of Google, Thompson said.

According to Thompson, a retirement plan specialist, one of the other jurors used a food analogy to describe Oracle's evidence.

"He said he was waiting for the steak, and all he got was the parsley," Thompson said, adding that in his opinion, Google's arguments in favor of open software collaboration swayed more tech savvy jurors.

All the other jurors filed past reporters outside the courtroom and declined to comment.

Walker said he was briefing a group of Google engineers about the company's legal issues when news of the verdict came in. "There was a real round of applause," he said.

While Oracle is seeking about \$1 billion in copyright damages, the patent damages in play were much lower.

In the event it lost on patent liability, Google offered to pay Oracle roughly \$2.8 million in damages on the two patents remaining in the case, covering the period through 2011, according to a filing made jointly by the companies before trial.

For future damages, Google proposed paying Oracle 0.5 percent of Android revenue on one patent until it expires this December and 0.015 percent on a second patent until it expires in April 2018. Oracle rejected the proposal. During trial, Judge Alsup revealed that Android generated roughly \$97.7 million in revenue during the first quarter of 2010. Shares in Oracle closed 1.2 percent higher at \$26.68. Google stock was up 1.4 percent at \$609.46.

Colleen Chien, a professor at Santa Clara Law in Silicon Valley, said the result shows the risks of IP litigation. "Oracle came in this thinking it was going to win billions, now it will probably walk away losing millions in legal fees," Chien said.

The case in U.S. District Court, Northern District of California, is Oracle America, Inc v. Google Inc, 10-3561.

(Reporting by Dan Levine; Editing by Gary Hill, Richard Chang and Edwina Gibbs)

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