

Judge scolds attorneys in Oracle vs. Google patent trial

May 21 2012, by Glenn Chapman



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US [District Court Judge](#) William Alsup's patience was tried as [Oracle](#) and [Google](#) lawyers argued opposite responses to [jury](#) questions focused on a distinction that could shift the verdict.

In notes sent to the judge, the jury asked if numbers are used in code to indicate where to get data but reach a symbol "downstream" in a program is it a numeric or symbolic reference.

Oracle is accusing Google of copying the way Java software uses symbolic references for certain actions in Android code for smartphones and [tablet computers](#).

Google's defense includes contending it used numbers, not symbols, in Android code.

Predictably, Google lawyers were adamant the jury be told such references are numeric, while Oracle attorneys want [jurors](#) to look at them as symbolic.

"I don't agree with either of you," Alsup said after silently mulling the opposing arguments as lawyers waited expectantly.

"So, I will give my own instruction to the jury and you can all preserve your positions for appeal," he continued.

"I'll do my best; you lawyers aren't going to agree on anything."

Alsup brought the jurors in and told them that numeric references don't change into symbolic references because of what happens later in [computer code](#) but to be mindful before concluding a reference is numeric at all.

"It doesn't get transmogrified into something else on account of what happens downstream," Alsup said of a numeric reference in [computer software](#) instructions.

"But how you determine if it is a numeric reference in the first place, that is an important question."



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Alsup then sent jurors back to continue their fifth day of deliberations in the patent phase of the [civil trial](#).

The judge then lashed out in what appeared to be frustration.

"I hope both sides learned something from this about patent cases," Alsup said after jurors left the courtroom.

"It is not as easy as you started to think when you brought this lawsuit or started defending this lawsuit," he continued, added that the 'brilliant' ideas lawyers had in strategy sessions were undone by the realities of trial.

"I am pointing my fingers at both of you," the judge said, doing just that. "Whoever loses on this too bad; you will have to take it up with the federal circuit (appeals court)."

Google wants a new trial on the copyright portion of the legal battle being fought with Oracle in San Francisco federal court.

In the first phase of the trial, jurors ruled that Android operating system violated [Java software](#) copyrights but deadlocked when it came to the pivotal question of whether it constituted "fair use" that made it acceptable.

If Google's use of copyrighted Java application programming interfaces (APIs) in Android was fair use, Oracle would deserve no damages from the Mountain View, California-based Internet firm under the law.

Google subsequently filed a motion asking Alsup to declare a mistrial in the copyright phase of the trial and have both questions presented to a new jury in a retrial.

Alsup is presiding over a second phase of the trial devoted to claims by Oracle that Google violated Java patents in Android software.

Oracle accused Google of infringing on Java computer programming language patents and copyrights Oracle obtained when it bought Java inventor Sun Microsystems in a \$7.4 billion deal in 2009.

Google has denied the claims and said it believes mobile phone makers and other users of its open-source Android operating system are entitled to use the Java technology in dispute.

The Internet titan unveiled the free Android operating system two years before Oracle bought Sun.

Before breaking off deliberations on Monday jurors sent another note, this one hinting that they were having trouble reaching agreement on whether Google was infringing.

"You are basically asking me 'Judge, what is the answer here?'," Alsup told the jury. "That is where the jury comes in."

With the jury gone, Alsup advised attorneys to think about to do if jurors couldn't reach the unanimous decision required by law for a verdict.

"If we have a hung jury on these issues, you all should be thinking about what our next steps are," Alsup said.

Deliberations will continue on Tuesday.

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Citation: Judge scolds attorneys in Oracle vs. Google patent trial (2012, May 21) retrieved 26 April 2024 from <https://phys.org/news/2012-05-attorneys-oracle-google-patent-trial.html>

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