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ORACLE AMERICA, INC.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14  
15 ORACLE CORPORATION, a Delaware  
corporation, and ORACLE AMERICA,  
16 INC., a Delaware corporation

17 Plaintiffs,

18 v.

19 LANDMARK TECHNOLOGY, LLC, a  
Delaware limited liability company,

20 Defendant.  
21

Case No. 3:13-cv-03203-NC

**COMPLAINT FOR  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT,  
INVALIDITY AND  
UNENFORCEABILITY OF U.S.  
PATENT NOS. 5,576,951 AND  
7,010,508**

**DEMAND FOR JURY TRIAL**

22 Plaintiffs Oracle Corporation and Oracle America, Inc. (collectively “Oracle”), through  
23 their undersigned counsel, seek a declaration that U.S. Patent Nos. 5,576,951 (the “‘951 patent”)  
24 and 7,010,508 (the “‘508 patent”) are invalid and have not been directly or indirectly infringed by  
25 Oracle and that the ‘951 patent is unenforceable because of inequitable conduct committed during  
26 its prosecution. In support of its request for declaratory judgment relief, Oracle alleges, on  
27 knowledge with respect to its own acts and on information and belief with respect to all other  
28 matters, as follows:

1 **NATURE OF THE ACTION**

2 1. This is an action for a declaratory judgment of patent non-infringement and  
3 invalidity arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the patent  
4 laws of the United States, Title 35 of the United States Code.

5 **THE PARTIES**

6 2. Plaintiff Oracle Corporation is a Delaware corporation with its principal place of  
7 business in Redwood Shores, California.

8 3. Plaintiff Oracle America, Inc. is a Delaware corporation with its principal place of  
9 business in Redwood Shores, California.

10 4. Defendant Landmark Technology, LLC (“Landmark”) is a Delaware corporation  
11 that represents its principal place of business to be at 719 W. Front Street, Suite 157, Tyler, Texas  
12 75702.

13 **JURISDICTION AND VENUE**

14 5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
15 §§ 1331, 1338(a), 2201(a) and 2202.

16 6. This Court has personal jurisdiction over Landmark because of Landmark’s  
17 contacts within the State of California, which include orchestrating and directing its patent  
18 licensing business from within the State of California. Upon information and belief, Landmark  
19 derives substantial revenues from its patent licensing activities within California. Landmark’s  
20 contacts with California include at least the following:

21 a. Lawrence B. Lockwood, the managing member of Landmark Technology,  
22 LLC, resides in California;

23 b. Mr. Lockwood has previously asserted patents from the same family as the  
24 Landmark patents in federal courts in California;

25 c. At least some of Landmark’s employees or consultants who are directly  
26 involved in Landmark’s current attempted commercialization of its patents reside in  
27 California;

28 d. Landmark has licensed its patents to one or more California companies in

1 agreements that are governed by California law and in which Landmark agreed to litigate  
2 any disputes related to the agreements in California;

3 e. Landmark’s lead attorneys involved in Landmark’s assertion of its patents  
4 reside in California; and

5 f. Patrick Nunally – Landmark’s executive who communicated with Oracle  
6 regarding Landmark’s patents – resides in California.

7 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c).

8 8. This is an intellectual property matter, which shall be assigned on a district-wide  
9 basis under Civil L.R. 3-2(c).

10 9. An immediate, real, and justiciable controversy exists between Oracle and  
11 Landmark as to whether the ’951 patent and the ’508 patent are valid and have been infringed by  
12 Oracle and as to whether the ’951 patent is unenforceable based on inequitable conduct  
13 committed before the United States Patent & Trademark Office (“PTO”).

14 **FACTUAL ALLEGATIONS**

15 10. The PTO issued the ’951 patent, entitled “Automated Sales and Services System,”  
16 on November 19, 1996. Lawrence B. Lockwood is listed as the sole inventor on the face of the  
17 ’951 patent.

18 11. On March 7, 2006, the PTO issued the ’508 patent, entitled “Automated  
19 Multimedia Data Processing Network,” and also listing Lawrence B. Lockwood as the sole  
20 named inventor.

21 12. The ’951 patent and the ’508 patent are in the same patent family, each claiming  
22 priority to U.S. Patent Application No. 06/613,525 filed by Mr. Lockwood on May 24, 1984, and  
23 later issued as U.S. Patent No. 4,567,359. Each of the five figures in the ’508 patent is also  
24 present in the ’951 patent.

25 13. Landmark claims to be the owner of all rights in the ’951 patent and the ’508  
26 patent.

27 14. On April 30, 2013, Patrick Nunally, Executive Vice President for the Technology  
28 Licensing Group of Landmark, sent a letter to Oracle, a true and correct copy of which is attached

1 as Exhibit A to this Complaint.

2 15. While the April 30, 2013 letter was issued on Landmark letterhead listing an  
3 address in Tyler, Texas, Mr. Nunally actually resides in California.

4 16. In the letter, Landmark expressly identified the '951 patent and alleged that  
5 Oracle's website at [www.oracle.com](http://www.oracle.com) makes use of the claimed technology of the '951 patent.  
6 The letter further "offer[ed] [Oracle] a license to use [Landmark's] patented technology," and  
7 enclosed a proposed license agreement.

8 17. The form license agreement required a payment by Oracle in an unspecified  
9 amount in exchange for a license to a "Patent" that is not identified in that form license  
10 agreement. The form agreement lists Lawrence Lockwood, the named inventor of both the '951  
11 and '508 patents, as the Managing Member of Landmark.

12 18. Over the past several years, Landmark has asserted the '951 patent and the '508  
13 patent in dozens of actions against over one hundred operators of e-commerce websites. In fact,  
14 in May and June 2013 alone, Landmark filed at least nine separate patent infringement actions  
15 asserting the '951 patent and the '508 patent.

16 19. In each of these lawsuits filed in 2013, Landmark asserted both the '951 patent and  
17 the '508 patent against operators of e-commerce websites. Landmark has asserted both the '951  
18 patent and the '508 patent against Oracle customers, some of which have requested  
19 indemnification from Oracle.

20 20. Landmark's letter to Oracle alleging that Oracle's website practices the '951  
21 patent, as well as Landmark's prodigious history of asserting the '951 patent and the '508 patent,  
22 which are in the same patent family, constitute affirmative acts by Landmark related to the  
23 enforcement of the '951 patent and the '508 patent against Oracle.

24 21. Contrary to Landmark's contentions, Oracle does not infringe any claims of the  
25 '951 patent or the '508 patent.

26 22. Furthermore, contrary to Landmark's contentions, the claims of the '951 patent  
27 and the '508 patent are invalid for failing to satisfy one or more conditions for patentability under  
28 35 U.S.C. §§ 101, 102, 103 and/or 112.

1 23. As described below, during prosecution of the applications that became the '951  
2 patent, the inventor and his agents made several false statements to the PTO and failed to disclose  
3 material information. In each instance, the false statements and failure to disclose relevant  
4 information were material to patentability and violated applicable duties of candor. The  
5 applicant's inequitable conduct included wholesale, verbatim copying of claims from an unrelated  
6 patent.

7 24. Based on the communication from Landmark asserting the '951 patent and  
8 Landmark's history of asserting the '951 and '508 patents, Oracle has a reasonable apprehension  
9 that Landmark will institute litigation against Oracle. Further, based on at least the facts alleged  
10 below, the dispute between Oracle and Landmark regarding the validity, infringement and  
11 enforceability of the '951 patent and the '508 patent is real, substantial, definite and concrete.

12 **COUNT I: DECLARATION OF NON-INFRINGEMENT OF THE '951 PATENT**

13 25. Oracle incorporates herein each of the allegations above.

14 26. Landmark has alleged that Oracle infringes the '951 patent through the use of,  
15 *inter alia*, its [www.oracle.com](http://www.oracle.com) website.

16 27. Oracle has not infringed and is not infringing, directly or indirectly, any valid and  
17 enforceable claim of the '951 patent because, *inter alia*, Oracle's [www.oracle.com](http://www.oracle.com) website does  
18 not include a computer search system for retrieving information or a computerized system for  
19 selecting and ordering a variety of products as specifically claimed in the '951 patent.

20 28. A substantial, immediate, and real controversy exists between Oracle and  
21 Landmark regarding Oracle's alleged infringement of the '951 patent.

22 29. Oracle is entitled to a declaration that Oracle does not infringe the '951 patent.

23 **COUNT II: DECLARATION OF INVALIDITY OF THE '951 PATENT**

24 30. Oracle incorporates herein each of the allegations above.

25 31. Landmark has asserted that the claims of the '951 patent are valid.

26 32. Oracle contends that the claims of the '951 patent are invalid for failing to satisfy  
27 one or more conditions for patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112 because,  
28 *inter alia*, computerized sales and services systems claimed in the '951 patent, such as Prestel,

1 Minitel, and Viewtron, were known in the art before the critical date of the '951 Patent.

2 33. A substantial, immediate, and real controversy exists between Oracle and  
3 Landmark regarding the validity of the '951 patent.

4 34. Oracle is entitled to a declaration that the '951 patent is invalid.

5 **COUNT III: DECLARATION OF NON-INFRINGEMENT OF THE '508 PATENT**

6 35. Oracle incorporates herein each of the allegations above.

7 36. The '508 patent is in the same patent family as the '951 patent, and has been  
8 asserted by Landmark along with the '951 patent in a large number of Landmark's patent  
9 infringement actions, including Landmark's most recent wave of actions, including against Oracle  
10 customers and against operators of websites with functionality similar to that of the  
11 [www.oracle.com](http://www.oracle.com) website referenced in Landmark's letter to Oracle

12 37. Oracle has not infringed and is not infringing, directly or indirectly, any valid and  
13 enforceable claim of the '508 patent because, *inter alia*, Oracle's [www.oracle.com](http://www.oracle.com) website does  
14 not include an automated multimedia system for data processing as claimed in the '508 patent.

15 38. Oracle is entitled to a declaration that Oracle does not infringe the '508 patent.

16 **COUNT IV: DECLARATION OF INVALIDITY OF THE '508 PATENT**

17 39. Oracle incorporates herein each of the allegations above.

18 40. Landmark has asserted that the claims of the '508 patent are valid.

19 41. Oracle contends that the claims of the '508 patent are invalid for failing to satisfy  
20 one or more conditions for patentability under 35 U.S.C. §§ 101, 102, 103 and/or 112 because,  
21 *inter alia*, computerized multimedia data processing systems claimed in the '508 patent, including  
22 systems known as "Prestel," "Minitel," and "Viewtron," were known in the art before the critical  
23 date of the '508 Patent.

24 42. A substantial, immediate, and real controversy exists between Oracle and  
25 Landmark regarding the validity of the '508 patent.

26 43. Oracle is entitled to a declaration that the '508 patent is invalid.

27  
28

1           **COUNT V: DECLARATION OF UNENFORCEABILITY OF THE '951 PATENT**

2           44.     Oracle incorporates herein each of the allegations above.

3           45.     In demanding that Oracle take a license to the '951 patent, Landmark has asserted  
4 that the claims of the '951 patent are enforceable.

5           46.     Oracle contends that the '951 Patent is unenforceable due to four instances of  
6 inequitable conduct described more fully below, either alone or in combination.

7           47.     Therefore, a substantial, immediate, and real controversy exists between Oracle  
8 and Landmark regarding the enforceability of the '951 patent.

9           **First Instance of Inequitable Conduct: Failure to Notify the PTO of Copied Claims**

10          48.     Prosecuting a patent application is an *ex parte process*, and patent applicants are  
11 subject to the duties of good faith, candor, and disclosure, among others, including a duty to  
12 disclose to the PTO all information known to that individual to be material to patentability.

13          49.     On March 16, 1994, Henri J.A. Charmasson, a patent attorney, filed with the PTO  
14 U.S. Patent Application No. 08/210,301 (the "'301 application"). The sole named inventor in the  
15 '301 application was Lawrence Lockwood.

16          50.     The '301 application presented twelve claims for examination to the United States  
17 Patent and Trademark Office ("PTO"). Claims 1-10 of the '301 application were exact copies of  
18 claims 1-6, 9, 25, 26, and 28, respectively, from U.S. Patent No. 5,241,671 (the "'671 Patent"),  
19 which issued on August 31, 1993. In addition, claim 11 of the '301 application was a substantial  
20 copy of claim 39 of the '671 Patent.

21          51.     The '671 Patent was issued to Michael Reed and others, and assigned to  
22 Encyclopaedia Britannica, Inc. Upon information and belief, the inventors and the assignee of the  
23 '671 patent are unrelated to the applicants of the '301 application.

24          52.     37 C.F.R. § 1.607(c) requires that "[w]hen an applicant [for patent] presents a  
25 claim which corresponds exactly or substantially to a claim of a patent, the applicant shall  
26 identify the patent and the number of the patent claim...."

27          53.     MPEP § 2001.06(d), both in its current incarnation and as it existed at the time the  
28 '301 application was filed, states that "[w]here claims are copied or substantially copied from a

1 patent, 37 CFR 1.607(c) requires applicant shall, at the time he or she presents the claim(s),  
2 identify the patent and the numbers of the patent claims...”

3 54. Applicants did not notify the PTO that claims 1-11 of the '301 application were  
4 copied from the '671 Patent.

5 55. 37 C.F.R. § 10.23(c)(7) states that “[k]nowingly withholding from the [PTO]  
6 information identifying a patent or patent application of another from which one or more claims  
7 have been copied” constitutes disreputable or gross misconduct.

8 56. MPEP § 2001.06(d), both in its current incarnation and as it existed at the time the  
9 '951 Patent was filed, states that “the information required by 37 CFR 1.607(c) as to the source of  
10 copied claims is material information under 37 CFR 1.56...”

11 57. Applicants' failure to notify the PTO that claims 1-11 of the '301 application were  
12 copied from the '671 Patent and to identify which claims of the '671 Patent were copied,  
13 constitutes affirmative egregious misconduct.

14 58. Applicants' failure to notify the PTO of the copied claims was material to the  
15 patentability of at least claims 1-9 of the '951 Patent as issued, which correspond to originally  
16 filed claims 1-7 and 10-11 in the '301 application, because failure to identify such information to  
17 the PTO is *per se* material to patentability.

18 59. In addition, applicants' failure to notify the PTO of the copied claims was material  
19 to the patentability of at least claims 1-9 of the '951 Patent because identifying the copied claims  
20 would have triggered an interference, a much more thorough and in-depth examination as to  
21 whether the claims of the '301 application were entitled to be issued in light of the existence of  
22 identical claims in a previously-issued U.S. Patent.

23 60. On information and belief, the '951 Patent would not have issued if the applicants'  
24 had notified the PTO of the copied claims.

25 61. When he filed the '301 application, Mr. Charmasson was an experienced patent  
26 attorney. He became a registered patent attorney in 1974, and directly prosecuted over 300  
27 patents to issue, as well as many applications that were abandoned. On information and belief,  
28 Mr. Charmasson has filed and prosecuted well over one hundred patent applications that claimed



1 to be a continuation, continuation-in-part, or divisional of a previous application.

2 62. On information and belief, applicants affirmatively chose not to notify the PTO  
3 that they copied the claims of the '301 application from the '671 Patent with the intent to mislead  
4 the PTO. Alternatively, such intent to mislead the PTO is the only reasonable inference from the  
5 totality of the circumstances alleged in this complaint.

6 63. Therefore, applicants' failure to notify the PTO of the copied claims constitutes  
7 inequitable conduct that renders the '951 Patent unenforceable.

8 **Second Instance of Inequitable Conduct: False Claim of Priority in the '973 Application**

9 64. 35 U.S.C. § 120 allows for a patent application to claim priority to an earlier-filed  
10 application only where the earlier-filed application discloses the invention in the later-filed  
11 application in the manner provided by 35 U.S.C. § 112.

12 65. MPEP § 201.08 defines a continuation-in-part application as "an application filed  
13 during the lifetime of an earlier nonprovisional application, repeating some substantial portion or  
14 all of the earlier nonprovisional application and adding matter not disclosed in the said earlier  
15 nonprovisional application."

16 66. The '951 Patent claims priority to May 24, 1984 – the filing date of U.S. Patent  
17 4,567,359 – through a series of applications including U.S. Patent Application Nos. 06/822/115  
18 (the "'115 application"), 07/152,973 (the "'973 application"), 07/396,283 (the "'283  
19 application"), and 08/116,654 (the "'654 application").

20 67. Applicants' claim of a May 24, 1984 priority date was based on applicants'  
21 representations to the PTO that the '115, '973, '283, and '654 applications were an unbroken  
22 chain of continuation or continuation-in-part applications leading back to the original application  
23 filed on May 24, 1984.

24 68. Specifically, in applications filed on February 18, 1988, August 21, 1989,  
25 September 3, 1993, and March 16, 1994, Mr. Charmasson represented to the PTO that the '973  
26 application is a continuation-in-part of the '115 application.

27 69. This representation was false since the specification of the '973 application does  
28 not share any substantive overlap with the specification of the '115 application nor does it repeat

1 any substantial portion of the '115 application. In fact, the '973 application was an entirely new  
2 application, with brand new figures and a completely new specification.

3 70. Therefore, applicants were not entitled to claim priority under 35 U.S.C. § 120 to  
4 the '115 application at any point during the prosecution of the applications that led to the issuance  
5 of the '951 patent. In addition, because the '115 application was abandoned long before the '301  
6 application was filed, applicants were not entitled to claim priority under 35 U.S.C. § 120 to the  
7 '115 application in the '301 application.

8 71. As such, the applicants' claim of priority to May 24, 1984, through the '973  
9 application was false.

10 72. The PTO takes a patent applicant's representations regarding priority as true and  
11 does not conduct an independent inquiry into whether the earlier application satisfies the  
12 requirements of 35 U.S.C. § 120 or 35 U.S.C. § 112.

13 73. Therefore, such representations regarding claim priority to the PTO are critical to a  
14 fair and honest examination because the PTO conducts its prior art search as if the pending  
15 application is entitled to the priority date claimed by the applicant.

16 74. Applicants' priority claim to the '115 application, when that application shares no  
17 substantive overlap with later applications that claim priority to the '115 application, constitutes  
18 affirmative egregious misconduct.

19 75. Applicants' false priority claim is also inherently material to the patentability of all  
20 claims of the '951 Patent because the PTO limited the scope of its prior art search to an earlier  
21 date than what the applicants were actually entitled to.

22 76. Specifically, because several limitations in each independent claim of the '951  
23 Patent have 35 U.S.C. § 112 support, if at all, only in the '973 application, applicants' false  
24 priority claim is material because it prevented the PTO from considering prior art at least between  
25 1984 (the earliest priority date claimed by the '951 Patent) and 1988 (the date of the '973  
26 application). As one example, the limitation "program means for controlling the display on said  
27 display device of inquiries and acceptable answers" in claim 10 of the '951 Patent has 35 U.S.C.  
28 § 112 support only in the '973 application, if at all.

1 77. Given the rapid development of technology at issue at the time of the examination  
2 of the '301, '654, '283, '973 and '115 applications, applicants' false claim of priority precluded  
3 the PTO from examining the later-pending applications against later relevant prior art.

4 78. On information and belief, the '951 Patent would not have issued if the applicants  
5 had not made a false priority claim to the '115 application.

6 79. On information and belief, applicants' false statements to the PTO regarding  
7 priority were made with the intent to mislead the PTO. Alternatively, such intent to mislead the  
8 PTO is the only reasonable inference from the totality of the circumstances alleged in this  
9 complaint, including patent prosecution experience of Mr. Charmasson and the lack of any  
10 substantive overlap in applications that might otherwise have supported the applicants'  
11 representations regarding priority.

12 80. Therefore, applicants' false priority claims related to the '115 application  
13 constitute inequitable conduct that renders the '951 Patent unenforceable.

14 **Third Instance of Inequitable Conduct: False Claim of Priority in the '283 Application**

15 81. In addition to the false claim of priority related to the '973 application, applicants  
16 also misrepresented the content and priority related to the '283 application. Specifically, in  
17 applications filed on August 21, 1989, September 3, 1993, and March 16, 1994, Mr. Charmasson  
18 represented to the PTO that the claims presented in the '951 Patent are entitled to claim priority to  
19 May 24, 1984, because the '283 application is a continuation-in-part of the '973 application.

20 82. This representation was false, as the specification of the '283 application does not  
21 share any substantive overlap with the specification of the '973 application nor does it repeat  
22 some substantial portion of the '973 application.

23 83. Therefore, applicants were not entitled to claim priority under 35 U.S.C. § 120 to  
24 the '973 application at any point during the prosecution of the applications that led to the issuance  
25 of the '951 patent. In addition, because the '973 application was abandoned long before the '301  
26 application was filed, applicants were not entitled to claim priority under 35 U.S.C. § 120 to the  
27 '973 application in the '301 application.

28 84. As such, the applicants' claim of priority to May 24, 1984, through the '283

1 application was false.

2 85. As noted above, this false claim of priority to the '973 application, when that  
3 application shares no substantive overlap with later applications that claim priority to the '973  
4 application, constitutes affirmative egregious misconduct.

5 86. Applicants' false priority claim is inherently material to the patentability of all  
6 claims of the '951 Patent because the PTO limited the scope of its prior art search to an earlier  
7 date than that to which the applicants were entitled.

8 87. Specifically, because several limitations in each independent claim of the '951  
9 Patent have 35 U.S.C. § 112 support, if at all, only in the '283 application, applicants' false  
10 priority claim is material because it prevented the PTO from searching for prior art between 1984  
11 (the earliest priority date claimed by the '951 Patent) and 1989 (the filing date of the '283  
12 application). As one example, the limitation "accessing means for providing access to said  
13 related information in said another entry path means" in claim 1 of the '951 patent has 35 U.S.C.  
14 § 112 support only in the '283 application, if at all.

15 88. Given the rapid development of technology at issue at the time of the examination  
16 of the '301, '654, '283, '973 and '115 applications, applicants' false claim of priority precluded  
17 the PTO from examining the later-pending applications against later relevant prior art.

18 89. On information and belief, the '951 Patent would not have issued if the applicants  
19 had not made a false priority claim to the '973 application.

20 90. On information and belief, applicants' false statements to the PTO regarding  
21 priority were made with the intent to mislead the PTO. Alternatively, such intent to mislead the  
22 PTO is the only reasonable inference from the totality of the circumstances alleged in this  
23 complaint, including patent prosecution experience of Mr. Charmasson and the lack of any  
24 substantive overlap in applications that might otherwise have supported the applicants'  
25 representations regarding priority.

26 91. Therefore, applicants' false priority claims related to the '973 application  
27 constitute inequitable conduct that renders the '951 Patent unenforceable.  
28

**Fourth Instance of Inequitable Conduct: Misrepresentations Regarding Content and  
Priority of '301 Application**

1  
2  
3 92. On March 16, 1994, Mr. Charmasson submitted to the PTO the '301 application,  
4 which later issued as the '951 Patent, in which he stated that the '301 application was a  
5 continuation of the '654 application and also a continuation of U.S. Application No. 08/096,610  
6 (the "'610 application").

7 93. On November 28, 1994, the PTO issued an Office Action in which it notified the  
8 applicants that the '301 application could not be a continuation of the '654 application because  
9 the disclosure of the '301 application is not the same as the disclosure of the '654 application.

10 94. This instruction was consistent with MPEP § 201.07, which provides that for an  
11 application to be a "continuation," "the disclosure presented in the continuation must be the same  
12 as that of the original application; i.e., the continuation should not include anything which would  
13 constitute new matter if inserted in the original application."

14 95. In response, the applicants submitted an Amendment and Reply on February 10,  
15 1995 in which they stated that the '301 application is a continuation-in-part of the '654  
16 application and also a continuation-in-part of the '610 application. However, later in the same  
17 Amendment and Reply, the applicants again stated that the '301 application is a straight  
18 continuation of the '610 application and also a straight continuation of the '654 application.

19 96. On September 26, 1995, the PTO issued a second Office Action where the  
20 examiner pointed out that the '301 application cannot be a continuation-in-part and a continuation  
21 at the same time.

22 97. On November 3, 1995, the applicants submitted a second Amendment and Reply,  
23 in which they stated that the '301 application is a continuation-in-part of the '654 application and  
24 a continuation-in-part of the '610 application because neither the '654 application nor the '610  
25 application contained the full disclosure of the '301 application. However, in the same  
26 Amendment and Reply, the applicants represented to the PTO that the '301 application is a  
27 straight continuation of the combination of the '654 and '610 applications.

28 98. In so doing, the applicants represented to the PTO that all matter in the '301

1 application can be found in either the '654 application or the '610 application. On the basis of  
2 this representation, the PTO issued the '951 Patent as a continuation of the combination of the  
3 '654 application and the '610 application.

4 99. In conducting its examination of the '301 application, the PTO made it clear that it  
5 took applicants at their word, noting that applicants' statements regarding priority were "taken  
6 automatically in good faith and candor; any discrepancies are a matter for the court."

7 100. However, the applicants' statements specified above were not made in good faith  
8 and candor. Instead, they were false. Contrary to the applicants' representation to the PTO that  
9 the '301 application is a combination of the '654 and '610 applications, the '301 application  
10 contains a substantial amount of disclosure that does not appear in either the '654 or '610  
11 applications, including six figures and at least nine full columns of written description,  
12 specifically figures 12-17 of the '301 application and col. 1, l. 56-col. 2, l. 63, col. 6, l. 36-col. 8, l.  
13 2, col. 11, ll. 55-65, col. 15, ll. 11-20, col. 16, ll. 24-36, and col. 16, l. 43-col. 23, l. 41 of the  
14 specification as it eventually issued in the '951 patent.

15 101. The vast majority of the new matter added into the '301 application came verbatim  
16 from the '973 application and several limitations in each independent claim of the '951 Patent  
17 have 35 U.S.C. § 112 support, if at all, only in the '973 or '283 applications. For this reason,  
18 applicants' false priority claim is material because it prevented the PTO from considering prior  
19 art at least between 1984 (the earliest priority date claimed by the '951 Patent) and 1989 (the date  
20 of the '283 application). As one example, the limitation "program means for controlling the  
21 display on said display device of inquiries and acceptable answers" in claim 10 of the '951 Patent  
22 has 35 U.S.C. § 112 support only in the '973 application, if at all. As another example, the  
23 limitation "accessing means for providing access to said related information in said another entry  
24 path means" in claim 1 of the '951 patent has 35 U.S.C. § 112 support only in the '283  
25 application, if at all.

26 102. Mr. Charmasson was well-aware of the new matter in the '301 application that  
27 came from the '973 application. In fact, although he initially cited directly to the '973 application  
28 for Section 112 support, starting with the second Amendment and Reply and subsequent

1 documents, he began citing solely to the portions of the '301 application that were copied directly  
2 from the '973 application without identifying the '973 application as the source of those cited  
3 portions.

4 103. Applicants' misrepresentations as to the priority and content of the '301  
5 application constitute affirmative egregious misconduct.

6 104. Applicants' misrepresentations as to the priority and content of the '301  
7 application are inherently material to the patentability of all claims of the '951 Patent because the  
8 PTO limited the scope of its prior art search to an earlier date than what the applicants were  
9 actually entitled to given the new matter in the '301 application. Thus, applicants'  
10 misrepresentations regarding the content of the '301 application precluded the PTO from  
11 examining the pending claims against later relevant prior art.

12 105. On information and belief, the '951 Patent would not have issued if the applicants  
13 had not made misrepresentations regarding the content and priority of the '301 application.

14 106. On information and belief, applicants' misrepresentations as to the priority and  
15 content of the '301 application were made with the intent to mislead the PTO. Alternatively, such  
16 intent to mislead the PTO is the only reasonable inference from the totality of the circumstances  
17 alleged in this complaint, including patent prosecution experience of Mr. Charmasson and the  
18 plain inclusion of new matter that did not appear in either of the earlier applications that formed  
19 the basis for the applicants' false claims.

### 20 Conclusion

21 107. The instances of inequitable conduct specified above, taken alone or in  
22 combination, constitute affirmative egregious misconduct and material misrepresentations, and  
23 the most reasonable inference from the totality of the circumstances is that applicants intended to,  
24 and did, deceive the PTO in order to obtain allowance of the '951 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Oracle respectfully requests that the Court:

A. Find and declare that Oracle does not infringe and has not infringed the '951 patent and the '508 patent;

B. Find and declare that the claims of the '951 patent and the '508 patent are invalid;

C. Find and declare that the claims of the '951 patent are unenforceable due to inequitable conduct;

D. Enter judgment in favor of Oracle and against Landmark on each of Oracle's claims;

E. Find that this is an exceptional case under 35 U.S.C. § 285 and award Oracle its costs and reasonable attorneys' fees;

F. Grant Oracle such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: July 11, 2013.

HOGAN LOVELLS US LLP

By: s/ Clayton C. James  
Clayton C. James

Attorneys for Plaintiffs  
ORACLE CORPORATION and ORACLE  
AMERICA INC.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Civil L.R. 3-6, Oracle hereby demands a trial by jury on all issues and claims so triable.

Respectfully submitted,

Dated: July 11, 2013

HOGAN LOVELLS US LLP

By: s/ Clayton C. James  
Clayton C. James

Attorneys for Plaintiffs  
ORACLE CORPORATION and ORACLE  
AMERICA INC.



## **EXHIBIT A**



LANDMARK TECHNOLOGY, LLC

719 West Front Street, Suite 157  
Tyler, Texas 75702  
(800) 768-1324  
[www.LandmarkEDI.com](http://www.LandmarkEDI.com)

April 30, 2013

Ms. Safra A. Catz  
President, CFO & Director  
Oracle Corp.  
500 Oracle Parkway  
Redwood City, California 94065

VIA U.S. MAIL

Re: LANDMARK PATENT USE AND LICENSING OPPORTUNITY

Dear Ms. Safra A. Catz:

As you may know, Landmark Technology, LLC ("Landmark") has exclusive rights to certain innovative computer, communication and network technologies relating to Internet searching, e-commerce, electronic bill pay, on-line banking services, business-to-business transactions, multimedia data processing networks and mobile technologies. Landmark's widely regarded technology covers, among other things, key transaction processes and features used in many electronic commerce systems, including structures which exchange business data amongst trading partners. Landmark's U.S. Patent No. 5,576,951C1 is currently in re-examination, Control Number 90/012/685.

However, we believe that Oracle Corp.'s websites, one of which is currently found at [www.Oracle.com](http://www.Oracle.com), makes use of the technology covered by our patent, including, but not limited to, Claims 1 & 10 of U.S. Patent No. 5,576,951C1, which addresses certain critical aspects of business-to-business and business-to-consumer transactions. More precisely, Oracle's system indexes graphic and textual information using HyperText Markup Language/JAVA script programming along with an associated database to provide users with a computer search system for retrieving information as described in detail by the claims of U.S. Patent No. 5,576,951C1 used at [www.Oracle.com](http://www.Oracle.com). Additionally, we believe that Oracle's mobile commerce systems enabled by your applications, some of which can be found at <https://itunes.apple.com/us/artist/oracle-america-inc./id284793707> and

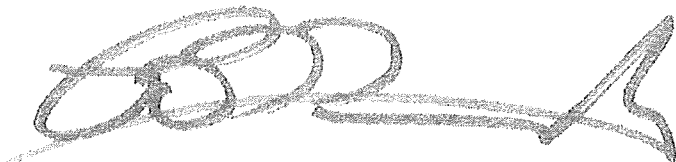
Ms. Safra A. Catz – President, CFO & Director  
April 30, 2013  
Page 2

<https://play.google.com/store/apps/developer?id=Oracle+America,+Inc.>, also make use of the technology. We believe you will find that Landmark's patent teaches technologies which are contributing significantly to Oracle's bottom line, and as such, are offering you a license to use our patented technology. For your convenience, enclosed is a draft license agreement and a copy of U.S. Patent No. 5,576,951C1.

We would like to further outline the details of this licensing opportunity and answer any questions you may have. Moreover, if you are of the opinion that you do not need a license under this patent, it would be helpful if you could give us some insight into your reasons, and we would welcome a dialogue with you on this point. I'm sure you have many questions, and as such, I would like to offer you and your team a detailed presentation showing examples of Oracle's current use of Landmark's technology.

At your earliest convenience, please suggest upcoming dates and times in which we could have a brief web conference (via GoToMeeting). You can reach me directly via an email at [patrick@landmarkEDI.com](mailto:patrick@landmarkEDI.com).

All the best,

A handwritten signature in black ink, appearing to read 'Patrick Nunally', with a stylized flourish at the end.

Patrick Nunally, Ph.D.  
Executive Vice President - Technology Licensing Group  
Landmark Technology, LLC  
[patrick@landmarkEDI.com](mailto:patrick@landmarkEDI.com)

PN/krl  
Enclosures (2)