Federal Circuit sends Oracle v. Google back for third trial

The Federal Circuit has ruled for a second time in *Oracle v. Google*, the software copyright lawsuit over Google's Android platform. The new decision reverses the district court yet again and sends the case back for a third trial to determine damages for Oracle. In the last trial, Oracle sought almost $9 billion in damages.

The litigation has been dragging on for about eight years now, bouncing up and down through appeals and two whole jury trials. It all started because Google wanted to make the Android platform compatible with apps written in the Java language. Rather than license the Java platform from Sun Microsystems, which would allow programs written in Java to run, Google instead chose to write its own version (also known as a clean room implementation). However, because of the way that code works, Android still shared some similarities with the Java platform.

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Shortly after acquiring Sun Microsystems in 2010, Oracle sued Google. Google won on all claims in 2012. Oracle appealed a copyright claim to the Federal Circuit and came back with a reversal in its favor in 2014. After the Supreme Court declined to hear the case, a second trial commenced.

In 2016, the second jury found that Google's use of the structure, sequence, and organization of 37 Java APIs was a fair use. Oracle asked for a judgment as a matter of law — that is, for the judge to toss out the freshly entered jury

verdict, rule in favor of Oracle, and start a new trial for damages. The judge, who had at this point been presiding over this case for, like, six years, chose not to.

Today, the Federal Circuit ruled that he was wrong and that Oracle should get Trial #3.

Here are some fun facts about this lawsuit:

- In 2014, the Federal Circuit sent the case back for another jury trial to determine fair use. A second jury was only ever seated because the Federal Circuit said so.
- Today, the Federal Circuit said that, as a matter of law, no jury could find fair use. So there shouldn't have been a jury trial on fair use in the first place?
- ….
- The Federal Circuit is a specialty appellate court that, among other things, handles appeals in patent cases.
- This is a copyright case.
- There used to be patents involved in this case. That's why it went up to the Federal Circuit.
- The Federal Circuit has not involved itself in any of the patents in this lawsuit.
- Actually, there haven't been any patents at issue for six years.
- Because copyright is not its thing, the Federal Circuit is supposed to apply the law of the Ninth Circuit (where California is located) when it comes to copyright.
- But the Ninth Circuit doesn't get to decide a copyright case where Ninth Circuit copyright law applies?
- Don't even get me started on the part where a Ninth Circuit ruling about Bikram yoga could be relevant to this case.
- The judge that the Federal Circuit overturned, for a second time, is Judge Alsup, who has been coding in BASIC since the 1980s and learned some Java for this lawsuit.

- The United States legal system is supposed to treat jury verdicts with great deference.
- By all accounts, the Supreme Court came pretty close to hearing *Oracle v. Google* in 2015. However, the Solicitor General's office – after a long, multi-agency debate inside the federal government – advised against it.
- There is now a new Solicitor General, a new Librarian of Congress, a new acting head of the Copyright Office, a new US Patent and Trademark Office head, and one new Supreme Court justice.
- I think I'm going to die before this lawsuit wraps up.

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