

# California LAWYER

## INTELLECTUAL PROPERTY



### CALIFORNIA LAWYER ATTORNEY OF THE YEAR

**Robert A. Van Nest**

KEKER & VAN NEST, SAN FRANCISCO

Van Nest was lead defense trial counsel for Google in its fight against Oracle in one of the most closely watched intellectual property cases of 2012. Oracle alleged that parts of Google's Android operating system infringed on seven Java programming language patents the company owned. It originally sought nearly \$6 billion in damages and an injunction forcing Google to alter its use and distribution of Android.

When the U.S. Patent and Trademark Office reexamined Oracle's claims, it invalidated five patents in question—which significantly reduced the amount of potential damages. Oracle also claimed that Android infringed on Oracle's Java application programming interfaces (API) copyright, but Van Nest successfully argued that APIs should not be

covered by U.S. copyright law, which had been a subject of legal controversy. It was the most specific verdict applied to APIs thus far, ensuring that they will remain available for free public use instead of becoming the intellectual property of any one company.

Because computer programmers depend on APIs for almost all code writing, experts had warned that a win for Oracle would have stifled innovation by forcing small and open-source programmers to pay usage fees. "The court stopped a really bad outcome," says Julie Samuels, an attorney with the Electronic Frontier Foundation in San Francisco. "If they had been tied down with copyright, Oracle could have held [programmers] hostage for 100 years."

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