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Robert Van Nest was selecting a jury for the second *Oracle v. Google* trial when he made a decision that still keeps him up at night. Representing Google in the Java API copyright case, Van Nest faced a potential juror who was a county counsel from Marin County — a lawyer who posed obvious risks but also potential advantages for Google's fair use defense.

"I understood the risk of having a lawyer on the jury, of course. It was very risky, but the client approved the choice," Van Nest recalled. The lawyer became jury foreperson and proved highly influential during deliberations. "I've often thought back on how my career would have been different had that decision backfired, which they often can. So I'm always nervous about leaving lawyers on juries."

In this case, the gamble paid off and Google won the fair use trial. The 9th Circuit reversed the district court, overturning the jury verdict, but the trial court decision set the stage for the 2021 Supreme Court victory that validated Google's use of Java APIs and established crucial precedent for software development. Years later, Van Nest says his "fairly risky take" could have changed the trajectory of his career and Google's future had it played out another way.

That ability to successfully deal with high-stakes calls has defined Van Nest's practice at Keker, Van Nest & Peters, where he's become the go-to trial lawyer for technology companies facing litigation. His 2024 alone included four trials with favorable outcomes in each, plus successful appeals including a precedential Federal Circuit en banc victory for Google in *EcoFactor v. Google*. After a panel initially upheld a $20 million damages award in a 2-1 decision, Van Nest secured the first en banc rehearing on patent damages since 1995. In May 2025, the full court reversed the district court's denial of Google's motion for a new trial on damages — an historic victory that established new precedent on expert testimony in patent cases.

His approach emphasizes radical simplification; a lesson learned through decades of complex technology cases. "When I was a younger lawyer, I sweated the details," he said. I was aware of all the facts, aware of all the evidence, and I tried to cover every single bit of it." He's since learned that even smart jurors "have trouble keeping track of everything" in lengthy trials. "If I had to do some of my early trials over again, I would absolutely simplify them, cut the number of themes down, cut the number of facts down, cut the number of witnesses down."

This philosophy proved crucial when a Texas judge's last-minute claim construction ruling eliminated Van Nest's non-infringement defense while representing Intel in a patent case against the CSIRO, Australia's scientific research organization. "Everything changed overnight" as the trial transformed from a two-issue case to an invalidity-only proceeding where Intel bore the burden of proof. "My witnesses changed, my trial strategy changed, the course of the trial changed, and we did it really all on the fly," Van Nest said. The adaptation worked — the judge ultimately pushed both sides toward settlement after indicating the plaintiff would lose.

Van Nest's recent victories include defeating alleged copyright and breach of contract claims before a San Jose federal court jury for Sunnyvale, California-based electronic design automation (EDA) software company Real Intent, Inc., and defending Fortinet in *Alorica v. Fortinet* to a complete defense verdict in October 2024 against claims seeking nine-figure damages plus punitive damages based on allegations of fraud and breach of warranty related to SD-WAN technology.

Currently, Van Nest leads OpenAI's defense in copyright lawsuits that will define fair use boundaries for generative AI products like ChatGPT. The consolidated cases, brought by authors, media organizations, and publishers including The New York Times and the Authors Guild, challenge the fundamental training methods used by AI companies.

Van Nest's team-building approach involves nightly dinners during trials where he personally serves wine and food to everyone from lawyers to experts to support staff. "I pour the wine myself. I serve the team," he said, emphasizing that Friday nights are mandatory downtime — "let's go bowling, miniature golf, let's go to a movie." He explained that this emphasis on team cohesion reflects his belief that successful trials require more than individual brilliance: they demand collective effort where everyone feels valued and connected to the mission.

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