

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., *et al.*,
Plaintiffs,
v.
SAP AG, *et al.*,
Defendants.

Case No. 07-CV-01658 PJH (EDL)
[PROPOSED] JUDGMENT
Judge: Hon. Phyllis J. Hamilton

Trial commenced in this matter on November 1, 2010. Pursuant to the jury’s verdict on November 23, 2010 (Dkt. No. 1004), Amended Trial Stipulation and Order No. 1 Regarding Liability, Dismissal of Claims, Preservation of Defenses, and Objections to Evidence at Trial (Dkt. No. 965), and Additional Trial Stipulation and Order Regarding Claims for Damages and Attorneys Fees (Under Seal at Dkt. No. 969), IT IS HEREBY ADJUDGED AND ORDERED that:

- (1) Plaintiff Oracle International Corporation shall recover from Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (“Defendants”), jointly and severally, the amount of \$1.3 billion (\$1,300,000,000).
- (2) Plaintiff Oracle International Corporation shall recover from Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc., jointly and severally, prejudgment interest in the amount of \$211,662,935.
- (3) The parties have stipulated and the Court has so ordered that Defendants shall pay (and have paid) Plaintiffs Oracle USA, Inc., Oracle International

1 Corporation, and Siebel Systems, Inc. (collectively, “Oracle” or “Plaintiffs”)
2 \$120 million (\$120,000,000) for Oracle’s past and future reasonable attorneys
3 fees and costs (including investigative costs) associated with Oracle’s
4 investigation and prosecution of its claims in this case.

5 (4) JUDGMENT is entered in favor of Oracle against Defendant TomorrowNow,
6 Inc. on all liability for all claims, including for violations of 18 U.S.C.
7 §§ 1030(a)(2)(C), (a)(4), (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) (the Federal
8 Computer Fraud and Abuse Act) and California Penal Code §§ 502(c)(2),
9 (c)(3), (c)(6) and (c)(7) (California’s Computer Data Access and Fraud Act),
10 breach of contract, intentional interference, negligent interference, unfair
11 competition, trespass to chattels, unjust enrichment/restitution, and for an
12 accounting, without separate monetary damages or monetary relief, including
13 punitive damages, by way of these claims.

14 (5) Pursuant to 17 U.S.C. § 503, within 30 days of final of entry of judgment,
15 Defendants, at their own expense, shall make such disposition as Oracle
16 requests of all of Defendants’ infringing materials, including all of Oracle’s
17 confidential, proprietary, and copyrighted software and support materials and
18 any derivative works or other partial or modified components of any Oracle
19 Registered Work, based in or containing in whole or in part Oracle’s
20 copyrighted materials. Defendants shall certify in writing, within 10 calendar
21 days of completion of such disposition, that such disposition is full and
22 complete. Oracle shall have the right to physically monitor and attend the
23 disposition, in person, with any representatives it may choose.

24
25 DATED: December ____, 2010

26 By: _____
27 Hon. Phyllis J. Hamilton
28 United States District Court Judge

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Following the November 23, 2010 jury verdict, the Court requested that the Parties
3 submit a proposed form of judgment. The Parties have met and conferred, but have not been
4 able to agree, on a proposed form of judgment. The primary dispute is whether the final
5 judgment should provide for prejudgment interest, and, if so, in what amount. Oracle’s proposed
6 form of judgment reflects the relief requested and awarded on all claims between the Parties.¹ It
7 also reflects the prejudgment interest due from the date of the three hypothetical licenses
8 (PeopleSoft, Siebel and Oracle Database), pursuant to Ninth Circuit precedent, at the approved
9 Ninth Circuit rate. Accordingly, pursuant to Fed. R. Civ. Proc. Rules 54 and 58, Oracle
10 respectfully requests the Court enter the form of judgment as proposed.

11 Every final judgment “should grant the relief to which each party is entitled,” Fed.
12 R. Civ. Proc. Rule 54(c), and must be “promptly” approved by the Court. Fed. R. Civ. Proc.
13 Rule 54(b)(2). In Oracle’s prayer for relief, beginning with its original complaint and continuing
14 in the operative complaint, Oracle always requested prejudgment interest. *See* Oracle’s
15 Complaint (Dkt. No. 1) at p. 41 & Oracle’s Fourth Amended Complaint (Dkt. No. 418) at p. 74.
16 Moreover, “a monetary award does not fully compensate for an injury unless it includes an
17 interest component.” *Kansas v. Colorado*, 533 U.S. 1, 10 (2001). As a result, courts routinely
18 award prejudgment interest to “ensure that an injured party is fully compensated for its loss.”
19 *City of Milwaukee v. Cement Div. Nat’l Gypsum Co.*, 515 U.S. 189, 195 (1995); *see also Frank*
20 *Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545, 1552 (9th Cir. 1989) (holding that
21 in a copyright action “prejudgment interest ordinarily should be awarded.”).

22 Prejudgment interest is not only routine to fully compensate victims of copyright
23 infringement, but “necessary”:

24 It is not difficult to imagine a case involving undisputed copyright
25 infringement-as is the case here-in which prejudgment interest may

26 ¹ SAP stated during meet and confer that they believe a full noticed motion is proper to resolve
27 the outstanding issues, but have provided no authority for this assertion. Oracle does not believe
28 that such briefing is necessary or proper in this context, but will file a full noticed motion or
supplemental briefing on the issues outstanding between the Parties should the Court so request.

1 be necessary to discourage needless delay and compensate the
2 copyright holder for the time it is deprived of lost profits or license
3 fees. Nor does the ability to recover multiple forms of remedies
4 render prejudgment interest superfluous. Frequently, a copyright
5 plaintiff can only recover one type of remedy, be it actual damages
6 or indirect profits, and the statutory availability of both remedies
7 does not mitigate harm caused by delay in making reparations-a
8 harm the remedy of prejudgment interest is uniquely tailored to
9 address. Simply put, prejudgment interest is a different remedy for
10 a different harm. Because prejudgment interest may be necessary
11 at times to effectuate the legislative purpose of making copyright
12 holders whole and removing incentives for copyright infringement,
13 we hold that the district court erred in concluding that prejudgment
14 interest is unavailable under the Copyright Act of 1976, and we
15 remand for further consideration.

16 *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 718 (9th Cir. 2004); *see also Frank Music*
17 *Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545, 1552-53 (9th. Cir. 1989) (remanding to
18 district court to enter an award of prejudgment interest and concluding that to deny prejudgment
19 interest “would be anomalous”).

20 Like in *Polar Bear*, an award of prejudgment interest is necessary here in light of
21 the undisputed nature of the infringement. Amended Trial Stipulation No. 1 (Dkt. No. 965) at
22 ¶¶ 1-2 (admitting to direct and indirect infringement by all Defendants). SAP AG and SAP
23 America further admitted that they “knew or had reason to know” of the infringement,
24 “intentionally and materially contributed” to the infringement, and continued the infringement
25 after Oracle filed this lawsuit, even though SAP was aware it was liable for contributory
26 infringement at the time Oracle filed its lawsuit. *See* Trial Stipulation on Contributory Liability
27 (Dkt. No. 966) (stipulating that SAP is liable for contributory infringement); *see* Final Jury
28 Instructions (Dkt. No. 1000) at p. 8 (contributory standard includes that SAP “knew or had
reason to know” and that SAP’s contribution was material and intentional); *see* Trial Stipulation
No. 3 Re Certain Facts (Dkt. No. 911) at ¶ 24 (admitting infringement of “some or all of
[Oracle’s copyrighted works] after Oracle filed this lawsuit on March 22, 2007.”); November 15,
2010 Trial Transcript at 1469:23-35 (Bill McDermott, SAP AG’s current co-CEO, testifying: “Q.
When did you first become aware that SAP had engaged in contributory copyright infringement

1 of Oracle’s software? A. When the Oracle lawsuit was announced.”); *see also Polar Bear*, 384
2 F.3d at 718.

3 The November 23 jury verdict awarded lost license fees based on a hypothetical
4 license negotiation that, by agreement of the Parties (and as reflected in the jury instructions),
5 would have occurred on January 19, 2005 for PeopleSoft and Oracle Database software, and on
6 September 29, 2006 for Siebel software. *See* November 22, 2010 Trial Transcript at 2217:2-8;
7 *see also* Joint Jury Instructions (Dkt. No. 1000), Instruction No. 9 (Defendants), at p. 15; *see also*
8 Jury Verdict Form (Dkt. No. 1004). As the jury instructions made clear, the jury was to award
9 damages “calculated at the time the infringement commenced.” November 22, 2010 Trial
10 Transcript at 2217:5; *see also* Joint Jury Instructions (Dkt. No. 1000), Instruction No. 9
11 (Defendants), at p. 15. To fully compensate Oracle for the time value of the lost license fees that
12 it should have received in 2005 and 2006, the Court should award Oracle prejudgment interest on
13 the jury verdict back to the agreed dates of the hypothetical license negotiations, pro-rated for
14 each negotiation. The remaining question is the rate to apply in calculating the prejudgment
15 interest award.

16 Courts in the Ninth Circuit use the 52-week Treasury Bill rate to set prejudgment
17 interest “unless the trial judge finds, on substantial evidence, that the equities of the particular
18 case require a different rate.” *See Western Pacific Fisheries, Inc. v. SS President Grant*, 730
19 F.2d 1280, 1289 (9th Cir. 1984); *see* 28 U.S.C. § 1961 (setting post-judgment interest standard);
20 *cf. Litton Systems, Inc. v. Ssangyong Cement Industrial Co., Ltd.*, 1995 WL 481458, *3-5 (N.D.
21 Cal. 1995) (holding that market borrowing rate at time of misappropriation was appropriate rate
22 rather than T-Bill rate and noting that in *Western Pacific* a rate of 8% was considered too low, as
23 the T-Bill rate at the time was over 9%), *judgment vacated and remanded on other grounds*, 107
24 F.3d 30 (Fed. Cir. 1997). While the rate used for post-judgment interest is the T-Bill rate “for
25 the calendar week preceding the date of the judgment,” prejudgment interest requires application
26 of historical rates over time, because it is “intended to cover the lost investment potential of
27 funds to which the plaintiff was entitled, from the time of entitlement to the date of judgment.”
28 *Nelson v. EG&G Energy Measurements Group, Inc.*, 37 F.3d 1384, 1391-92 (9th Cir. 1994)

**DECLARATION OF PAUL K. MEYER IN SUPPORT OF
ORACLE'S PROPOSED JUDGMENT**

I, Paul K. Meyer, declare as follows:

1. I am over the age of 18 and competent to testify to the facts stated in this declaration. All statements made in this declaration are based upon my personal knowledge and belief. If called and sworn as a witness, I could and would competently testify as to such matters.

2. I am President of TM Financial Forensics, LLC. Prior to starting TM Financial Forensics, I was a Managing Director with Navigant Consulting and co-leader of their national intellectual property practice. Prior to that, I was President and co-founder of Tucker Alan Inc. I am a Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), Certified in Financial Forensics (CFF) and accredited in business valuation (CPA-ABV). I am a Consulting Professor at Stanford University in the Graduate School of Engineering, where I have been teaching a course covering accounting, quantitative methods and financial issues for over fifteen years. I am also a member of the Advisory Board for the McIntire School of Commerce at the University of Virginia. I graduated from the University of Virginia in 1979. I lecture on intellectual property valuation, including at the Sedona Patent Conference, the USC Intellectual Property Institute, the Licensing Executive Society and Law Seminars International.

3. I have over twenty five years of experience consulting on financial, accounting, economic and damages matters. I have consulted on numerous intellectual property infringement, misappropriation, valuation and licensing-related matters. I have analyzed hundreds of claims for lost profits and other financial and economic impacts, and have analyzed and determined reasonable royalty rates. I have testified in approximately seventy trials and major arbitrations, including over thirty jury trials. I have frequently provided input and analysis on prejudgment and post-judgment interest calculations in cases venued in Federal and state courts.

Prejudgment Interest Calculation

4. At Oracle’s request, I have performed a calculation to determine the amount of prejudgment interest owed to Oracle following the November 23, 2010 jury verdict. I have allocated the \$1.3 billion jury verdict amount for a fair market value license to all of the infringed copyrights to the three separate fair market value licenses (related to Oracle’s PeopleSoft, Oracle Database and Siebel copyrights) since the licenses would have been paid on different dates and the interest accrued is related to when the license fee would have been received. The \$1.3 billion is allocated according to the relative percentage of my fair market value license calculation that each license constituted, as shown in the following table.

TABLE 1: ALLOCATION OF JURY VERDICT

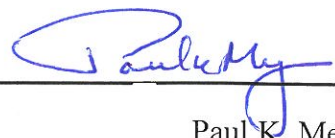
License	Oracle Damages Claim	% of Total	Allocated Verdict
PeopleSoft	\$1,500,000,000	90.60%	\$1,177,820,730
Database	\$55,600,000	3.36%	\$43,657,888
Siebel	\$100,000,000	6.04%	\$78,521,382
Total	\$1,655,600,000	100.00%	\$1,300,000,000

5. I have calculated the prejudgment interest owed to Oracle on those license amounts from the agreed dates of the corresponding license negotiations to December 1, 2010, using the 1 Year Constant Maturity Yield on U.S. Treasury securities for the week prior to each anniversary of the license (for PeopleSoft and Siebel) and based on the average rate for each annual period in which license fees would have been received for the database license, compounded annually. Using this methodology, I have calculated the total prejudgment interest owed to Oracle is \$211,662,935 (**Exhibit A**).

6. I have attached a summary of several measurements of market interest rates including, the Bank Prime Loan rate, and rates for other maturities of Treasury bills (**Exhibit B**). The interest rates used in my calculation are conservative in comparison to these rates. The interest rates I have used are also conservative in comparison to the rate of return that Oracle could have earned from reinvesting the license fees over time, as well as in comparison to the rate of interest that SAP paid during the relevant time period on its unsecured borrowings

1 (Exhibit B). As an example, using the Bank Prime Loan rate over time, the corresponding
2 amount of prejudgment interest that would have been due to Oracle would be more than double
3 the amount of interest I have calculated using the 1 Year Treasury rate, which reflects the return
4 on a completely risk-free asset.

5 I declare under penalty of perjury that the foregoing is true and correct and that
6 this declaration was executed on December 7, 2010 at San Francisco, California.

7
8 

9 _____
Paul K. Meyer

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Allocation of Verdict:

License	Oracle Damages Claim	% of Total	Allocated Verdict
PeopleSoft	\$1,500,000,000	90.60%	\$1,177,820,730
Database	\$55,600,000	3.36%	\$43,657,888
Siebel	\$100,000,000	6.04%	\$78,521,382
Total	\$1,655,600,000	100.00%	\$1,300,000,000

TOTAL

PeopleSoft License (1/19/2005)

Period Start Date	1/19/2005	1/19/2006	1/19/2007	1/19/2008	1/19/2009	1/19/2010	
Period End Date	1/18/2006	1/18/2007	1/18/2008	1/18/2009	1/18/2010	12/1/2010	
BOP Amount	\$1,177,820,730	\$1,211,388,621	\$1,264,810,859	\$1,328,430,845	\$1,366,025,438	\$1,371,899,347	
Interest:							
Interest Rate ^[1]	2.85%	4.41%	5.03%	2.83%	0.43%	0.35%	
Partial Year Adj.	1.00	1.00	1.00	1.00	1.00	0.87	
Adj. Interest Rate	2.85%	4.41%	5.03%	2.83%	0.43%	0.30%	
Interest	\$33,567,891	\$53,422,238	\$63,619,986	\$37,594,593	\$5,873,909	\$4,115,698	\$198,194,315
EOP Amount	\$1,211,388,621	\$1,264,810,859	\$1,328,430,845	\$1,366,025,438	\$1,371,899,347	\$1,376,015,045	

Database License (1/19/2005)

Period Start Date	1/19/2005	1/19/2006	1/19/2007	1/19/2008	1/19/2009	1/19/2010	
Period End Date	1/18/2006	1/18/2007	1/18/2008	1/18/2009	1/18/2010	12/1/2010	
BOP Amount	\$0	\$16,159,012	\$31,093,446	\$42,839,837	\$47,463,270	\$47,686,347	
Interest on BOP:							
Interest Rate ^[4]	3.69%	4.96%	4.43%	1.71%	0.47%	0.32%	
Partial Year Adj.	1.00	1.00	1.00	1.00	1.00	0.87	
Adj. Interest Rate	3.69%	4.96%	4.43%	1.71%	0.47%	0.28%	
Interest on BOP	\$0	\$801,487	\$1,377,440	\$732,561	\$223,077	\$133,522	\$3,268,087
Period License Fees ^[3]	\$15,865,500	\$13,790,932	\$10,143,760	\$3,857,696	\$0	\$0	
Interest on Period Fees:							
Interest Rate ^[4]	3.69%	4.96%	4.43%	1.71%			
Partial Year Adj. ^[2]	0.50	0.50	0.50	0.50			
Adj. Interest Rate	1.85%	2.48%	2.22%	0.86%			
Interest on Period Fees	\$293,512	\$342,015	\$225,191	\$33,176	\$0	\$0	\$893,894
EOP Amount	\$16,159,012	\$31,093,446	\$42,839,837	\$47,463,270	\$47,686,347	\$47,819,869	

Siebel License (9/29/2006)

Period Start Date		9/29/2006	9/29/2007	9/29/2008	9/29/2009	9/29/2010	
Period End Date		9/28/2007	9/28/2008	9/28/2009	9/28/2010	12/1/2010	
BOP Amount		\$78,521,382	\$82,423,895	\$85,762,063	\$87,434,423	\$87,792,904	
Interest:							
Interest Rate ^[1]		4.97%	4.05%	1.95%	0.41%	0.25%	
Partial Year Adj.		1.00	1.00	1.00	1.00	0.17	
Adj. Interest Rate		4.97%	4.05%	1.95%	0.41%	0.04%	
Interest		\$3,902,513	\$3,338,168	\$1,672,360	\$358,481	\$35,117	\$9,306,639
EOP Amount		\$82,423,895	\$85,762,063	\$87,434,423	\$87,792,904	\$87,828,021	

TOTAL INTEREST \$211,662,935

Notes:

[1] U.S. Treasury securities 1-year constant maturity yield for the week prior to the Period Start Date (<http://www.federalreserve.gov/releases/h15/data.htm>).

[2] Interest on database license fees for the period is calculated using the mid-year convention.

[3] Calculated as annual amount from Meyer Schedule 44.SU x (\$43,657,888 ÷ \$55,624,097).

[4] Average U.S. Treasury securities 1-year constant maturity yield for the January 19 through January 18 period (<http://www.federalreserve.gov/releases/h15/data.htm>).

EXHIBIT B

INTEREST RATES

EXHIBIT B

	2005	2006	2007	2008	2009	2010
1 Year Constant Maturity Yield for the Week Ending Prior to January 19th ^[1]	2.85%	4.41%	5.03%	2.83%	0.43%	0.35%
1 Year Constant Maturity Yield for the Week Ending Prior to September 29th ^[1]		4.97%	4.05%	1.95%	0.41%	0.25%
5 Year Constant Maturity Yield for the Week Ending Prior to January 19th ^[1]	3.72%	4.34%	4.70%	2.97%	1.42%	2.51%
Bank Prime Loan Rate for the Week Ending Prior to January 19th ^[1]	5.25%	7.25%	8.25%	7.25%	3.25%	3.25%
Oracle Rates of Return: ^[2]						
Discount Rate - Maintenance Agreements and Related Customer Relationships	10%	10%				
Internal Rate of Return	12%	12%				
Weighted Average Cost of Capital	12%	11%				
SAP Interest Rate on Unsecured Borrowings ^[3]	7.22%	8.08%	8.03%	4.30%	4.32%	

Notes:

[1] Federal Reserve Statistical Releases - Selected Historical Interest Rates (<http://www.federalreserve.gov/releases/h15/data.htm>).

[2] Oracle Corporation, Estimation of the Fair Value of Certain Assets and Liabilities of PeopleSoft, Inc. as of December 28, 2004 [ORCL00313160-253] at 177; Oracle Corporation, Estimation of the Fair Value of Certain Assets and Liabilities of Siebel Systems, Inc. as of January 31, 2006 [ORCL00312747-819] at 761-762.

[3] SAP Annual Report 2006, p. 155; SAP Annual Report 2009, p. 200.