

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

**CERTIFIED COPY**

ORACLE CORPORATION, ET AL.	)	
	)	NO. C 07-01658 PJH
PLAINTIFFS,	)	
	)	JURY TRIAL
VS.	)	VOLUME 2
	)	
SAP AG, ET AL.,	)	PAGES 297 - 479
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	TUESDAY, NOVEMBER 2, 2010

(PAGES 297 THROUGH 312 ARE UNDER SEAL AND BOUND SEPARATELY)

**TRANSCRIPT OF PROCEEDINGS**

APPEARANCES:

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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530**

1 PROBLEM -- THOUSANDS OF PEOPLE WHO ARE WORKING ON THOSE ALL THE  
2 TIME, AND IN ADDITION TO WORKING ON DEVELOPING THE NEXT RELEASE  
3 OF WHATEVER SOFTWARE THAT IS OR THE NEXT GREATEST PRODUCT THAT  
4 THEY'RE GOING TO PUT OUT INTO THE MARKET.

5 AND THE CUSTOMERS VALUE THESE SUPPORT PRODUCTS VERY  
6 HIGHLY, AS YOU CAN IMAGINE. AND THEY PAY FOR THEM ANYWHERE FROM  
7 A FEW THOUSANDS OF DOLLARS TO A FEW MILLIONS OF DOLLARS EVERY  
8 YEAR DEPENDING ON HOW MUCH THEY HAVE AND THE SIZE AND THE SCOPE  
9 OF THE BUSINESS.

10 NOW, THE SOFTWARE -- THE SUPPORT IS VALUABLE TO  
11 ORACLE FOR THE REVENUE THAT IT GENERATES BECAUSE IT'S REALLY  
12 THAT -- THOSE FEES, THE FEES THAT CUSTOMERS PAY FOR SUPPORT  
13 EVERY YEAR, THAT ORACLE USES TO REINVEST INTO ITS BUSINESS, TO  
14 PAY THE THOUSANDS OF DEVELOPERS WHO ARE WORKING ON DEVELOPING  
15 THE SUPPORT AND WORKING ON DEVELOPING THE NEXT GENERATION OF THE  
16 PRODUCT.

17 THAT'S THE RESEARCH AND DEVELOPMENT THAT SOFTWARE  
18 COMPANIES ARE CONSTANTLY DOING IN ORDER TO STAY COMPETITIVE, IN  
19 ORDER TO IMPROVE.

20 (DEMONSTRATIVE PUBLISHED TO JURY.)

21 **MR. HOWARD:** NOW, ORACLE AND SAP, THEY'RE NOT THE  
22 ONLY ONES THAT PROVIDE SUPPORT FOR THEIR PRODUCTS. THERE IS  
23 SOMETHING CALLED THIRD-PARTY SUPPORT. THIRD-PARTY SUPPORT IS A  
24 SEPARATE COMPANY -- THEY MAY BE SEPARATE COMPANIES, AND THE  
25 DEFENDANT TOMORROWNOW WAS ONE OF THOSE COMPANIES.

1 THERE, 57 PERCENT. ORACLE AND PEOPLESOFT KIND OF TIED FOR  
2 SECOND WAY DOWN THERE AT ABOUT 12 PERCENT.

3 NOW, AFTER THE ACQUISITION, SAP IS STILL FAR AND  
4 AWAY, AS I SAID, THE MORE DOMINANT PLAYER. BUT FOR THE FIRST  
5 TIME -- REALLY, FOR THE FIRST TIME IN THE HISTORY OF ENTERPRISE  
6 APPLICATION SOFTWARE, ORACLE IS STARTING TO CATCH UP. AND  
7 YOU'LL HEAR EVIDENCE THAT THIS IS WHAT SAP REGARDED AS A THREAT.

8 SO THESE TWO COMPANIES HAVE A CHOICE. THEY EACH HAVE  
9 A CHOICE IN JANUARY OF 2005.

10 (DEMONSTRATIVE PUBLISHED TO JURY.)

11 **MR. HOWARD:** THE EVIDENCE WILL SHOW THAT THEY EACH  
12 TOOK A RISK. THE RISK ORACLE TOOK WAS AN 11 BILLION-DOLLAR  
13 RISK. AND IT WAS BETTING THAT IT COULD KEEP THOSE CUSTOMERS  
14 HAPPY, THAT IT COULD INTEGRATE THE PEOPLESOFT PRODUCTS INTO ITS  
15 PRODUCT LINE, AND THAT IT COULD CREATE A COMPANY THAT COULD  
16 COMPETE WITH SAP.

17 SAP ALSO TOOK A RISK. AND IT HAD A CHOICE. IT COULD  
18 HAVE CHOSEN TO COMPETE FAIRLY. THE EVIDENCE WILL SHOW THAT  
19 INSTEAD, IT CHOSE TO BUY TOMORROWNOW, A COMPANY THAT THE BOARD  
20 OF DIRECTORS AT SAP KNEW WAS INFRINGING ORACLE'S SOFTWARE.

21 AND THEY CHOSE TO TAKE THAT RISK BECAUSE THEY  
22 EXPECTED TO MAKE ENORMOUS AMOUNTS OF MONEY, WHICH IS SOMETHING  
23 THAT YOU'LL TAKE INTO ACCOUNT IN DECIDING THE AMOUNT OF DAMAGES  
24 AND IT EXPECTED TO INFLICT ENORMOUS HARM ON ORACLE USING  
25 ORACLE'S OWN INTELLECTUAL PROPERTY.

1 I MEAN, IT REALLY IS A PROCESS OF TRIAL AND ERROR.  
2 YOU TRY A SOLUTION, YOU TRY A CERTAIN SET OF FUNCTIONALITY,  
3 RIGHT, YOU GIVE IT TO CUSTOMERS, AND CUSTOMERS GIVE YOU  
4 FEEDBACK. SOMETIMES THE FEEDBACK IS GOOD, SOMETIMES THE  
5 FEEDBACK IS BAD. THIS DOESN'T WORK FOR ME. THIS DOESN'T  
6 SATISFY MY REQUIREMENTS. THEREFORE, YOU NEED TO TRY AGAIN.

7 YOU NEED TO CHANGE THE WAY THE APPLICATION WORKS.  
8 YOU NEED TO ADD SOME MORE FUNCTIONALITY. IT TAKES A LONG TIME  
9 NO MATTER HOW MUCH MONEY YOU PUT AT IT, IT TAKES A LONG TIME TO  
10 BUILD OUT A COMPLETE VIABLE SOLUTION FOR CUSTOMERS IN THE  
11 APPLICATION SPACE.

12 **Q.** YOU KNOW, YOU MENTIONED A \$4 BILLION RESEARCH AND  
13 DEVELOPMENT BUDGET. THAT'S A LOT OF MONEY. WHERE DOES ORACLE  
14 GET THAT MONEY TO DEVELOP AND CREATE ITS PRODUCTS?

15 **A.** SO, AS I MENTIONED, WE HAVE 370,000 CUSTOMERS AROUND THE  
16 WORLD. NOW, THOSE CUSTOMERS, OF COURSE, HAVE PAID US MONEY TO  
17 HAVE THE RIGHT TO USE THAT SOFTWARE, BUT THEY ALSO SUBSCRIBE TO  
18 SUPPORT. SO THEY PAY US FOR SUPPORT.

19 THEY PAY US AN ANNUAL FEE IN ORDER TO BE ABLE TO ASK  
20 US QUESTIONS, REPORT PROBLEMS, AND MOST IMPORTANTLY GET UPDATES  
21 TO THAT SOFTWARE. SO GET FIXES TO BUGS, GET NEW FUNCTIONALITY,  
22 YOU KNOW, GET INFORMATION FROM US ABOUT HOW TO USE THE SOFTWARE  
23 MORE EFFECTIVELY.

24 **Q.** DO YOU HAVE PERSONAL EXPERIENCE WITH THE TYPE OF EFFORT  
25 REQUIRED TO DEVELOP ENTERPRISE APPLICATION SOFTWARE?

1 ITS SOFTWARE WITH COPYRIGHTS?

2 **A.** WELL, WE TALKED A FEW MINUTES AGO ABOUT THE WAY WE FUND  
3 OUR DEVELOPMENTS. IT'S BASICALLY PAID FOR BY THE MONEY THAT  
4 OUR CUSTOMERS PAY US, ESPECIALLY THE MONEY THAT OUR CUSTOMERS  
5 PAY US FOR SUPPORT.

6 NOW, IF OTHER COMPANIES COULD JUST TAKE OUR  
7 INTELLECTUAL PROPERTY AND GIVE IT TO OTHER PEOPLE, THEN WE  
8 WOULDN'T HAVE THAT SUPPORT REVENUE. WE WOULDN'T HAVE THOSE  
9 LICENSE FEES. WE WOULDN'T ACTUALLY BE ABLE TO PAY ALL THOSE  
10 PROGRAMMERS THAT WE PAY TO MAKE OUR SOFTWARE BETTER AND TO  
11 INNOVATE.

12 WHEN I FIRST JOINED ORACLE IN '86, ORACLE WAS A  
13 SMALL COMPANY WITH BASICALLY ONE PRODUCT. RIGHT? TODAY,  
14 ORACLE IS A MUCH LARGER COMPANY WITH MANY, MANY PRODUCTS. AND  
15 THAT CORE INITIAL DATABASE PRODUCT, ORACLE DATABASE, IS MUCH  
16 MORE POWERFUL AND MUCH MORE SOPHISTICATED.

17 IF ORACLE DID NOT HAVE INTELLECTUAL PROPERTY RIGHTS,  
18 THEN THERE IS NO WAY THAT ORACLE COULD HAVE PAID FOR THE  
19 ENGINEERING TO MAKE THE ORACLE DATABASE WHAT IT IS TODAY TO  
20 BUILD THE ADDITIONAL PRODUCTS THAT WE BUILD TODAY.

21 **Q.** DO YOU RUN ACROSS ORACLE'S COPYRIGHT PROTECTION EFFORTS IN  
22 THE COURSE OF YOUR JOB?

23 **A.** YES, YES, YES. ALL THE TIME. SO INSIDE ORACLE, OF  
24 COURSE, EVERY TIME WE PRODUCE A CD OR DVD WITH OUR SOFTWARE IN  
25 IT IT'S STAMPED WITH THE COPYRIGHT.

