

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.	)	<b>JURY TRIAL</b>
	)	
PLAINTIFFS,	)	NO. C 07-01658 PJH
	)	
VS.	)	<b>VOLUME 7</b>
	)	
SAP AG, ET AL.,	)	PAGES 1188 - 1420
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	FRIDAY, NOVEMBER 12, 2010

***CERTIFIED COPY***

**TRANSCRIPT OF PROCEEDINGS**

APPEARANCES:

FOR PLAINTIFFS:

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REPORTED BY:

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

1 GOOD THIS WAS GOING TO BE FOR SAP WHEN THEY WENT AND COMPETED  
2 WITH ORACLE HEAD TO HEAD FOR THOSE PEOPLESOFT CUSTOMERS.

3 Q. NOW, WE'RE GETTING NEAR THE END, BUT I WANT TO GO THROUGH A  
4 FEW OF THE DOCUMENTS THAT YOU WERE SHOWN. AND I WANT TO SHOW  
5 YOU AND THE COURT WHAT WASN'T SHOWN FROM THOSE DOCUMENTS.

6 SO LET'S START WITH YOUR OWN REPORT. SAP'S COUNSEL  
7 REFERRED YOU TO PAGE 144 OF YOUR OWN REPORT AND SUGGESTED THAT  
8 YOU SOMEHOW USED INFORMATION ABOUT ORACLE'S R & D EXPENDITURES  
9 AFTER THE DATE OF THE NEGOTIATION.

10 (EXHIBIT PUBLISHED TO JURY.)

11 **BY MR. PICKETT:**

12 Q. WHAT DID YOU ACTUALLY WRITE IN YOUR REPORT?

13 A. WELL, THIS IS IN MY REPORT. AND WHEN WE TALKED ABOUT THE  
14 RESEARCH AND DEVELOPMENT, THE WAY IT WAS PUT IN THE REPORT, THIS  
15 RELATES TO THE INVESTMENT BY ORACLE.

16 I SAID, "ORACLE'S INVESTMENT OVER -- OF OVER  
17 \$1 BILLION IN FURTHER RESEARCH AND DEVELOPMENT FOR ITS  
18 PEOPLESOFT AND JD EDWARDS PRODUCTS SINCE THE ACQUISITION" -- AND  
19 THIS IS AN IMPORTANT PHRASE -- I SAID, "WHICH ORACLE WOULD  
20 REASONABLY UNDERSTAND THAT IT WOULD HAVE TO SPEND."

21 AND THAT MEANS THAT THEY WOULD HAVE KNOWN AT THE TIME  
22 OF THE HYPOTHETICAL THEY'D HAVE TO KEEP INVESTING IN THE  
23 PRODUCTS, THE PATCHES, AND THE BUG FIXES TO KEEP THE SOFTWARE  
24 CURRENT.

25 AND THEN I SAY, "AND THAT SAP WOULD HAVE (SIC) AVOID

