

EXHIBIT D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)

PLAINTIFFS,)

VS.)

SAP AG, ET AL.,)

DEFENDANTS.)

NO. C 07-01658 PJH

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OAKLAND, CALIFORNIA

WEDNESDAY, SEPTEMBER 30, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BOIES, SCHILLER & FLEXNER, LLP
1999 HARRISON STREET, SUITE 900
OAKLAND, CALIFORNIA 94612

BY: STEVEN C. HOLTZMAN, ATTORNEY AT LAW

BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607

BY: ZACHARY J. ALINDER,
ANTHONY FALZONE,
HOLLY A. HOUSE,
GEOFFREY M. HOWARD,
DONN P. PICKETT, ATTORNEYS AT LAW

FOR DEFENDANTS:

JONES DAY
SILICON VALLEY OFFICE
1755 EMBARCADERO ROAD
PALO ALTO, CALIFORNIA 94303

BY: THARAN GREGORY LANIER, ATTORNEY AT LAW

(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258

1 AND THEN THEIR EXPERT MADE THE CHOICE -- HE DID NOT
2 HAVE TO GO THERE. HE DID NOT HAVE TO TURN AROUND AND DECIDE
3 THAT I'M GOING LOOK AT CROSS-SELL AND UP-SELL --

4 **THE COURT:** YEAH, I DON'T RECALL THAT AS BEING PART
5 OF THEIR REQUEST SPECIFICALLY. THIS IS THE FIRST THAT I'VE
6 LOOKED AT THIS ISSUE.

7 ALL RIGHT. THIS IS WHAT WE'RE GOING TO DO. I THINK
8 THAT THE ISSUE'S -- IS A VERY IMPORTANT ISSUE, AND THAT ONE OF
9 THE REASONS I DON'T GENERALLY ENTERTAIN LEGAL MOTIONS UNDER THE
10 GUISE OF A MOTION IN LIMINE, BECAUSE THE PROCEDURE IS A MORE
11 TRUNCATED PROCEDURE THAN REAL MOTIONS. AND THIS IS CERTAINLY
12 SOMETHING THAT SHOULD HAVE BEEN MORE FULLY BRIEFED AND I -- AND
13 GIVEN ME MORE OPPORTUNITY TO LOOK AT IT.

14 BUT WHAT I'LL DO IS WHEN I'M LOOKING AT THE GOODWILL
15 ISSUE, I'LL TAKE A LOOK AT THE BRIEF THAT WAS FILED BY ORACLE --
16 I -- I DON'T BELIEVE I WAS PUT ON NOTICE THAT THAT WAS WHAT THEY
17 WERE ATTEMPTING TO DO. AND I'M MORE INCLINED TO DENY THE MOTION
18 AND TO ALLOW IT TO BE PRESENTED. BUT I'LL TAKE A LOOK TO MAKE
19 SURE THAT IT WASN'T SOMETHING THAT I JUST OVERLOOKED. AND TO
20 GIVE YOU A DECISION IN THE PRETRIAL ORDER.

21 **MR. McDONELL:** VERY WELL. THANK YOU, YOUR HONOR.

22 **THE COURT:** ON BOTH 1 AND 2.

23 **MR. PICKETT:** THANK YOU.

24 **THE COURT:** OKAY. LET'S TURN QUICKLY, THEN, TO THE
25 DAUBERT MOTIONS. WE ONLY HAVE UNTIL NOON. I HAVE ANOTHER

1 CALENDAR THIS AFTERNOON, SO -- WE STILL HAVE A LOT OF THINGS TO
2 GET THROUGH, AND I'LL JUST TELL YOU WITH RESPECT TO THE DAUBERT
3 MOTIONS, WE HAVE FOUR BY ORACLE AND THREE BY SAP, AND IT IS MY
4 INTENTION TO DENY ALL OF THE MOTIONS EXCEPT ONE. AND THE REASON
5 THAT I'M GOING TO DENY ALL OF THE MOTIONS IS BECAUSE IT REALLY
6 DOES SEEM TO ME THAT YOU ALL ARE TRYING TO GET A RULING AS A
7 MATTER OF LAW ON THE VARIOUS DIFFERENT DAMAGES THEORIES THROUGH
8 THE GUISE OF THESE DAUBERT MOTIONS.

9 I MEAN, ALL OF THE EXPERTS ARE QUALIFIED, SOME MORE
10 QUALIFIED THAN OTHERS. BUT ALL OF THEM HAVE RELEVANT
11 QUALIFICATIONS. THEIR METHODOLOGIES DIFFER, BUT I DON'T SEE ANY
12 REAL BASIS FOR EXCLUDING ANY OF THESE EXPERTS. MOST OF THE
13 ARGUMENTS GO TO EITHER THE WEIGHT OF THEIR OPINIONS AND
14 CONCLUSIONS OR TO THE ACTUAL MERITS OF THE OPINIONS OR
15 CONCLUSIONS.

16 I MEAN, YOU ALL TAKE ISSUES WITH EACH OTHER'S -- YOU
17 KNOW, IF I HAD READ ONE OF THESE -- IF I HAD READ THEM
18 INDIVIDUALLY OVER THE COURSE OF MONTHS, IT'D BE DIFFERENT, BUT I
19 READ ALL SEVEN OF THEM BACK TO BACK, AND THE ARGUMENTS STARTED
20 TO KIND OF BLUR BECAUSE EACH SIDE IS MAKING THE SAME ARGUMENT
21 ABOUT THE OTHER SIDE'S EXPERTS.

22 AND AS I -- AS I INDICATED, I THINK MOST OF THE
23 OBJECTIONS REALLY GO TO THE MERITS OF THE EXPERT'S TESTIMONY. I
24 THINK THEY SHOULD ALL TESTIFY IF THAT'S WHAT YOU WANT AND THE
25 JURY WILL DECIDE. SO I AM NOT INCLINED TO GRANT ANY OF THEM

1 **THE COURT:** FRIDAY IS OUT. AND THEN THE FOLLOWING
2 WEEK, IT'S THE ENTIRE WEEK, WHICH IS THE LAST DAY.

3 **MR. PICKETT:** RIGHT.

4 **THE COURT:** AND I WILL TELL THE JURY THAT TIME LIMITS
5 HAVE BEEN IMPOSED AND THAT YOU ALL ARE GOING TO BE HELD TO THEM,
6 WHICH IS THE ONLY WAY THAT I CAN PREDICT THAT THE TRIAL WILL END
7 WHEN I SAY IT'S GOING TO END.

8 OKAY?

9 **MR. PICKETT:** THANK YOU, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. WE'RE OUT OF TIME.

11 I WILL GIVE YOU ONE MINUTE EACH IF YOU WANT TO SAY
12 SOMETHING ABOUT THE DAUBERT RULING.

13 **MR. LANIER:** I'M STICK TO MY 30 SECONDS, YOUR HONOR.

14 **THE COURT:** OKAY.

15 **MR. LANIER:** FORGET ALL OF THE CRITIQUES OF THEIR
16 QUALIFICATIONS OR THEIR METHODOLOGIES. YOUR HONOR'S RULING ON
17 SUMMARY JUDGMENT ELIMINATING SAVED ACQUISITION COSTS SHOULD
18 RENDER MR. PINTO, MR. RIEFER, AND MR. GARMUS MOOT BECAUSE THEY
19 ONLY ADDRESS THAT SAVED ACQUISITION COSTS REMEDY.

20 SIMILARLY, YOUR HONOR'S RULING ON SAVED ACQUISITION
21 COSTS ALSO SPOKE TO THE FAIR MARKET VALUE LICENSE THEORY. IT
22 SAID THAT IT HAD TO VALUE THE IP AT ISSUE.

23 MR. MEYER'S FAIR MARKET VALUE LICENSE METHODOLOGY
24 VALUES COMPLETE CORPORATE ACQUISITIONS, INCOME STREAMS, AND
25 NEVER VALUES THE IP AT ISSUE.

1 WE'LL REST WITH THAT.

2 **THE COURT:** OKAY. AND THE ONLY THING THAT I WILL SAY
3 ABOUT THAT IS IT WAS NOT CLEAR TO ME BECAUSE THE WAY THAT YOU
4 ALL FRAMED YOUR MOTIONS, YOU WERE OBJECTING TO CERTAIN OPINIONS
5 AND CERTAIN PARTS. IT WASN'T ENTIRELY CLEAR TO ME WHAT THE
6 EXPERTS WERE GOING TO TESTIFY TO IN ADDITION TO THE
7 OBJECTIONABLE PARTS.

8 AND I TOTALLY AGREE, THERE SHOULD BE NO -- THERE WILL
9 BE NO TESTIMONY FROM AN EXPERT ON SAVED ACQUISITION COSTS.
10 THAT'S OUT OF THE CASE.

11 BUT IT WASN'T CLEAR TO ME THAT THE EXPERTS AREN'T
12 BEING OFFERED FOR MORE THAN JUST THAT. AND TO THE EXTENT THAT
13 THERE'S MORE THAN JUST THAT, I, FRANKLY, DIDN'T READ -- I MEAN,
14 I PICKED UP THE 294-PAGE REPORT OF MEYER, I THINK IT WAS, OR ONE
15 OF THEM, AND I COULDN'T GO ANY FURTHER THAN THAT.

16 **MR. HOLTZMAN:** NO, I --

17 **THE COURT:** -- READ ALL THE EXPERT REPORTS, SO I'M
18 NOT SURE -- I MEAN, AT LEAST NOT WITH ANY DETAIL. I MEAN, I
19 PERUSED THEM LOOKING AT THE PARTS THAT YOU ALL POINTED TO, BUT I
20 COULDN'T READ THEM COVER TO COVER.

21 **MR. HOLTZMAN:** RIGHT.

22 **THE COURT:** SO I HAVE NO IDEA IF THERE'S SOMETHING IN
23 THERE THAT IS NOT SUBJECT TO BEING PRECLUDED BY VIRTUE OF THE
24 PRETRIAL RULING.

25 **MR. HOLTZMAN:** RIGHT. AND, OBVIOUSLY, WITH REGARD TO

CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658 PJH, ORACLE CORPORATION, ET AL. V. SAP AG, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

MONDAY, OCTOBER 4, 2010