

# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CERTIFIED COPY**

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.	)	<b>JURY TRIAL</b>
	)	
PLAINTIFFS,	)	NO. C 07-01658 PJH
	)	
VS.	)	<b>VOLUME 5</b>
	)	
SAP AG, ET AL.,	)	PAGES 754 - 946
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	MONDAY, NOVEMBER 8, 2010

**TRANSCRIPT OF PROCEEDINGS**

APPEARANCES:

FOR PLAINTIFFS:

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

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

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

BY: DAVID BOIES,  
STEVEN C. HOLTZMAN, ATTORNEYS AT LAW

(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258  
DIANE E. SKILLMAN, CSR NO. 4909

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

1           **THE COURT:**   AND THE -- THE -- IS MR. PICKETT NOT  
2 CORRECT THAT YOU HAD THIS PARTICULAR DATA, AND ARE YOU TELLING  
3 ME THAT YOU CHOSE NOT TO TAKE DISCOVERY ON THIS PARTICULAR DATA  
4 BECAUSE YOU THOUGHT THAT IT WAS BLOCKED BY JUDGE LAPORTE'S  
5 ORDER?

6           **MR. McDONELL:**   NO.

7           **THE COURT:**   AND IF THAT'S THE CASE, I DON'T QUITE --  
8 I DON'T UNDERSTAND HOW THAT WORKS.

9           **MR. McDONELL:**   HERE'S THE POINT, YOUR HONOR. BY THE  
10 TIME IT BECAME KNOWN THAT ORACLE WAS SEEKING DAMAGES BEYOND LOST  
11 SUPPORT PROFITS, IT WAS FAR, FAR LATE IN THE FACT DISCOVERY  
12 PERIOD; IN FACT, JUST MONTHS FROM THE CLOSE OF FACT DISCOVERY.

13                           THE ISSUE GOT LITIGATED BEFORE JUDGE LAPORTE AND THEN  
14 LITIGATED BEFORE YOUR HONOR THROUGH THE OBJECTIONS, AND JUDGE  
15 LAPORTE FOUND THAT THIS WAS OUT OF BOUNDS, PERIOD. AND FOR  
16 PURPOSES OF YOUR ADOPTING ORDER, WE UNDERSTOOD THAT YOU TOOK  
17 THAT EVEN ONE STEP TOWARDS FURTHER CLARIFICATION BY SAYING THIS  
18 IS NOT COMING IN THROUGH THE BACK DOOR EITHER.

19                           WE UNDERSTOOD THAT LOST UPSELL AND CROSS-SELL  
20 OPPORTUNITIES WERE OFF THE TABLE. YES, WE HAD SOME PROJECTION  
21 DOCUMENTS.

22           **THE COURT:**   SO YOU THINK THE DISTINCTION BETWEEN THE  
23 ACTUAL SALES, WHICH IS WHAT I WAS CONCENTRATING ON, AS OPPOSED  
24 TO THE PROJECTED SALES -- YOU THINK THERE'S NO -- YOU HAVE  
25 CONSTRUED THE ORDER AS NOT PROVIDING A DISTINCTION BETWEEN THOSE

1 TWO.

2 **MR. McDONELL:** IT'S MORE THAT -- IT -- IT'S -- THE  
3 SUBSTANCE I COME BACK TO IS WE DIDN'T HAVE ACTUAL DATA EITHER  
4 BEFORE OR AFTER THE DATE OF THE INFRINGEMENT. AND SO WE  
5 COULDN'T ASSESS THE -- THE CREDIBILITY OF THE PROJECTIONS AT THE  
6 TIME THEY'RE MADE OR WITH THE BENEFIT OF HINDSIGHT, WHICH THE  
7 CASE LAW PERMITS.

8 **THE COURT:** SO YOUR EXPERT DIDN'T LOOK AT THE  
9 PROJECTIONS AND HAS NO OPINION AS TO THE MERIT OF THE  
10 PROJECTIONS?

11 **MR. McDONELL:** HE HAS -- HE WILL HAVE OPINIONS. HE  
12 WILL, HOWEVER, STATE THAT HE HAS BEEN -- AND HE HAS STATED THIS  
13 IN THE DECLARATION HE FILED WITH JUDGE LAPORTE, THAT HE'S BEEN  
14 SEVERELY LIMITED (PHONETIC) -- LIMITED IN HIS ABILITY TO  
15 CHALLENGE HIM BECAUSE HE DOESN'T HAVE THE UNDERLYING DATA.

16 AND HE IS -- AS A RESULT, THERE'S A FAIR AMOUNT OF  
17 PRESSURE ON OUR SIDE TO SIMPLY ACCEPT THEM.

18 **THE COURT:** OKAY. I DON'T QUITE --

19 **MR. PICKETT:** I NEED TO CORRECT --

20 **THE COURT:** EXCUSE ME. EXCUSE ME.

21 **MR. PICKETT:** SORRY.

22 **THE COURT:** I'M NOT EXACTLY SURE HOW I'M SUPPOSED TO  
23 RESOLVE IT WITH ONE SIDE SAYING THE DATA HAS BEEN PROVIDED AND  
24 THE OTHER SIDE SAYING WE DON'T HAVE ACCESS AND HAVEN'T HAD  
25 ACCESS TO THE UNDERLYING DATA.

1                   GENERALLY, THESE KINDS OF MATTERS ARE DETERMINED  
2 BEFORE TRIAL. WHEN THE MAGISTRATE JUDGE LAPORTE LOOKED AT  
3 THESE, SHE MADE A DETERMINATION. I AFFIRMED IT. DIDN'T OCCUR  
4 TO ME THAT THERE WAS THE DISTINCTION THAT YOU'RE NOW DRAWING.

5                   **YOU ALL NEED TO GIVE ME SOME ASSISTANCE IN**  
6 **DETERMINING HOW I'M SUPPOSED TO DECIDE AN ISSUE OF -- DISCOVERY**  
7 **ISSUE THAT SHOULD HAVE BEEN RESOLVED BEFORE TRIAL.**

8                   **MR. PICKETT:** LET ME BE CRYSTAL CLEAR ABOUT ONE  
9 THING. THIS DATA WAS PRODUCED PRIOR TO THEIR FILING THE RULE 37  
10 MOTION WITH MAGISTRATE JUDGE LAPORTE.

11                   THE DEPOSITIONS OF MR. ELLISON, MS. CATZ,  
12 MR. PHILLIPS WERE PRIOR TO THEIR MOTION TO MAGISTRATE JUDGE  
13 LAPORTE.

14                   IF THEY HAD SOME QUARREL WITH WHAT THESE PROJECTIONS  
15 WERE OR WHETHER THERE WAS SOMETHING MORE THEY NEEDED, OR THERE  
16 WAS SOMETHING MISSING, WOULDN'T THEY HAVE TOLD JUDGE LAPORTE  
17 ABOUT IT RATHER THAN TRYING TO SWEEP THIS IN NOW AND SAY THAT  
18 WELL, PROJECTIONS, YOU KNOW, AREN'T GOOD ENOUGH. PROJECTIONS  
19 ARE PRECISELY THE ISSUE.

20                   KEEP IN MIND THE CASE LAW ON THIS HYPOTHETICAL  
21 NEGOTIATION. IT'S NOT BASED ON -- YOU KNOW, AFTER THE FACT.  
22 IT'S BASED ON PROJECTIONS IN THE MIND AT THE TIME. THAT'S THIS  
23 EVIDENCE. THEY'VE HAD IT. THEY'VE HAD AN OPPORTUNITY -- AND  
24 IT'S FAR TOO LATE TO COME IN HERE NOW AND TRY AND CUT THIS OUT,  
25 PARTICULARLY WHEN THEY'VE OPENED THE DOOR AGAIN AND AGAIN AND

1 AGAIN.

2           **MR. McDONELL:** YOUR HONOR, LET'S COME BACK TO WHAT'S  
3 BEEN PRECLUDED. JUDGE LAPORTE PRECLUDED THEM FROM PURSUING  
4 CLAIMS FOR LOST UPSELL AND CROSS-SELL OPPORTUNITIES.  
5 OPPORTUNITIES. A PROJECTION OF WHAT THEY THINK THEY'RE GOING TO  
6 GET IN CROSS-SELL AND UPSELL IS NOTHING MORE THAN A PROJECTION  
7 OF THAT OPPORTUNITY. IT'S AN EMBODIMENT OF THAT OPPORTUNITY.

8           JUDGE LAPORTE FOUND THAT WE HAD NOT HAD ADEQUATE  
9 DISCOVERY ON THAT ISSUE TO CHALLENGE IT ONE WAY OR THE OTHER.  
10 WE STILL HAVE NOT HAD IT. IT IS ABSOLUTELY WITHIN THE COURT'S  
11 POWER AND AUTHORITY TO SIMPLY AFFIRM THAT RULING AND ALLOW  
12 PLAINTIFFS TO PROCEED WITH THEIR ALTERNATIVE THEORY THAT THEIR  
13 EXPERT'S READY TO PROCEED WITH HERE TODAY.

14           **THE COURT:** RIGHT. RIGHT. WELL, I THINK YOU'VE BOTH  
15 MADE GOOD ARGUMENTS. IT CLEARLY WASN'T CONTEMPLATED BY THE  
16 COURT AT THE TIME OF THE PRETRIAL RULING. BUT I'M PERSUADED BY  
17 THE DEFENSE POSITION. I THINK IT'S CLOSE ENOUGH -- I THINK  
18 OPPORTUNITY IS CLOSE ENOUGH.

19           I'M GOING TO REAFFIRM THE RULING. UPSELL,  
20 CROSS-SELL, WHICH I HAVE DENIED ALL ALONG, CONTINUES TO BE  
21 DENIED.

22           **MR. McDONELL:** THANK YOU, YOUR HONOR.

23           **MR. PICKETT:** WILL WE AT LEAST BE ABLE TO MAKE AN  
24 OFFER OF PROOF FOR THE RECORD, YOUR HONOR?

25           **THE COURT:** SURE.

