

Exhibit C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	JURY TRIAL
)	
PLAINTIFFS,)	NO. C 07-01658 PJH
)	
VS.)	VOLUME 11
)	
SAP AG, ET AL.,)	PAGES 1880 - 2020
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	FRIDAY, NOVEMBER 19, 2010

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

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1 AND B WILL BE GIVEN. AND THE DEFENDANTS' 5A IS WITHDRAWN.

2 **MR. LANIER:** CORRECT, YOUR HONOR. THANK YOU.

3 **THE COURT:** OKAY. ALL RIGHT.

4 NOW TURNING TO NUMBER 6.

5 WHY DON'T I JUST TELL YOU THE DIFFICULTY I AM HAVING
6 JUST GENERALLY WITH THE OVERALL DAMAGES CONCEPT.

7 IT'S UNCLEAR TO ME WHETHER PLAINTIFF IS TAKING THE
8 POSITION THAT THE JURY DOES NOT -- IS NOT GOING TO BE REQUIRED
9 TO ELECT BETWEEN LOST PROFITS AND THE HYPOTHETICAL LICENSE.

10 THE DEFENSE INSTRUCTIONS ARE PRETTY CLEAR. THE
11 PROPOSED INSTRUCTIONS ARE PRETTY CLEAR THAT -- AND I THINK IT'S
12 CONSISTENT WITH THE WITNESS' TESTIMONY FOR THE MOST PART, THAT
13 THE JURY WILL BE ASKED TO MAKE A DECISION WITH RESPECT TO
14 ACTUAL DAMAGES, AS TO WHETHER OR NOT ACTUAL DAMAGES SHOULD BE
15 ESTABLISHED BY VIRTUE OF THE HYPOTHETICAL LICENSE OR BY
16 ORACLE'S LOST PROFITS. ALL RIGHT?

17 IF THE JURY DETERMINES THAT LOST PROFITS IS A BETTER
18 MEASURE OF DAMAGES, GIVEN THE FACTS OF THIS CASE, THEN THEY
19 WILL HAVE TO DETERMINE WHICH MEASURE THAT PROFFERED BY ORACLE
20 OR THAT PROFFERED BY THE DEFENDANT. AND THEN THE JURY WILL
21 HAVE TO TURN TO THE QUESTION OF THE INFRINGER'S PROFITS.

22 IT'S NOT CLEAR TO ME FROM THE DEFENDANTS'
23 INSTRUCTIONS WHETHER OR NOT YOU'RE TAKING THE POSITION THAT --
24 FROM THE VERDICT FORM IT'S NOT CLEAR.

25 ARE YOU TAKING THE POSITION THAT INFRINGER'S PROFITS

1 ARE ONLY ADDED IF THERE'S A LOST PROFIT ELECTION BY THE JURY AS
2 OPPOSED TO A HYPOTHETICAL LICENSE?

3 **MR. LANIER:** THAT'S CORRECT, YOUR HONOR. AND THAT'S
4 BECAUSE, UNDER THE LAW, YOU'RE ENTITLED TO AWARD BOTH ACTUAL
5 DAMAGES AND INFRINGER'S PROFITS TO THE EXTENT THAT THE
6 INFRINGER'S PROFITS AREN'T ALREADY INCLUDED IN THE ACTUAL
7 DAMAGES. AND, MORE IMPORTANTLY ALSO, BECAUSE AS ARGUED BY
8 PLAINTIFFS AND DISCLOSED IN THE PRETRIAL STATEMENT, ET CETERA,
9 WERE THEY TO BE AWARDED DAMAGES BASED ON THE HYPOTHETICAL
10 LICENSE, THAT COVERS BOTH.

11 SO THE CHOICE THE JURY IS BEING GIVEN IS TAKE THE
12 LICENSE APPROACH, AWARD ONE NUMBER BASED ON THE LICENSE, AND
13 YOU CAN ARGUE WHAT THE NUMBER SHOULD BE, BUT AWARD A NUMBER
14 BASED ON THE LICENSE, OR AWARD TWO NUMBERS, LOST PROFITS PLUS
15 INFRINGER'S PROFITS. THAT'S THE CHOICE.

16 SO THAT'S WHY OUR SPECIAL VERDICT FORM WAS SET UP TO
17 SAY, DO THIS IF YOU DO THE LOST PROFITS NUMBER, THEN GET TO
18 QUESTION TWO. IF YOU DO THE LICENSE NUMBER, SIGN AND RETURN.

19 **THE COURT:** OKAY.

20 WHAT'S THE PLAINTIFFS' POSITION?

21 **MR. BOIES:** FIRST, I THINK THE LAW IS CLEAR THAT THE
22 PLAINTIFF IS ENTITLED TO BOTH ACTUAL DAMAGES PLUS INFRINGER'S
23 PROFITS UNLESS THE ACTUAL DAMAGES HAS ALREADY SOMEHOW CAPTURED
24 THE INFRINGER'S PROFITS.

25 **THE COURT:** RIGHT.

1 **MR. BOIES:** WE BELIEVE THAT THE PLAINTIFF ACTUALLY
2 HAS THE RIGHT TO ELECT THE HYPOTHETICAL LICENSE, AND THAT THE
3 RIGHT WAY FOR IT TO GO TO THE JURY IS TO GO TO THE JURY BASED
4 ON A QUESTION OF WHAT WAS THE ACTUAL DAMAGES BASED ON A
5 HYPOTHETICAL LICENSE. BECAUSE WE BELIEVE THE PLAINTIFF HAS THE
6 RIGHT TO ELECT THAT FORM OF DAMAGES AS OPPOSED TO LOST PROFITS.

7 SO, WHAT WE REALLY BELIEVE THE JURY SHOULD BE
8 INSTRUCTED IS THAT ON THE ACTUAL DAMAGES ASPECT, THEY OUGHT TO
9 VALUE THE HYPOTHETICAL LICENSE. AND THEY HAVE TWO ALTERNATIVE
10 VALUES FOR THE HYPOTHETICAL LICENSE.

11 IF THE JURY WERE TO BE GIVEN A CHOICE BETWEEN A
12 HYPOTHETICAL LICENSE AND LOST PROFITS, THEN IT'S CLEAR THAT THE
13 LOST PROFITS ESTIMATE OF THE TWO EXPERTS DO NOT INCLUDE
14 INFRINGER PROFITS.

15 IT IS LESS CLEAR WHETHER THE HYPOTHETICAL LICENSE
16 DOES OR DOES NOT INCLUDE INFRINGER PROFITS, AND I THINK IT
17 DEPENDS, TO SOME EXTENT, ON HOW YOU INTERPRET WHAT THE TWO
18 EXPERTS HAVE SAID --

19 **THE COURT:** WHAT YOUR EXPERT HAS SAID. I MEAN,
20 YOU'RE ATTEMPTING TO ESTABLISH THE HYPOTHETICAL LICENSE.

21 **MR. BOIES:** THEY HAVE A HYPOTHETICAL LICENSE --

22 **THE COURT:** BUT I WOULD MAKE A DETERMINATION BASED
23 ON WHETHER OR NOT YOUR EXPERT HAS INCLUDED IT IN HIS
24 CALCULATION.

25 WHAT'S YOUR VIEW OF THE EVIDENCE?

1 **MR. BOIES:** I THINK HE HAS NOT INCLUDED THE
2 INFRINGING PROFITS AS PART OF THE HYPOTHETICAL LICENSE. I
3 THINK THE WAY HE CONSTRUCTS THE HYPOTHETICAL LICENSE IS ON THE
4 VALUE AT THE TIME OF THE INFRINGEMENT COMMENCEMENT, THAT IS,
5 JANUARY 19TH, AND HE VALUES WHAT IT WAS THAT WAS TAKEN AWAY.

6 AND THE WAY THE COURTS HAVE DESCRIBED THE
7 HYPOTHETICAL LICENSE CALCULATIONS IS YOU -- THE HOLDER OF THE
8 COPYRIGHT IS BEING DEPRIVED OF THE VALUE OF THE LICENSE THAT
9 OTHERWISE WOULD HAVE BEEN SOLD. SO THAT IF THEY HAD DONE WHAT
10 THE PROCESS CONTEMPLATES, WHICH IS, THEY HAD PURCHASED THIS
11 LICENSE, HOW MUCH WOULD THEY HAVE PAID FOR IT.

12 THAT IS SEPARATE BECAUSE THAT'S AN ACTUAL DAMAGES
13 CALCULATION. THAT IS SEPARATE FROM WHAT PROFITS THEY MAKE IN
14 TERMS OF INFRINGEMENT LATER.

15 **MR. LANIER:** YOUR HONOR, SEVERAL RESPONSES BRIEFLY.

16 FIRST OF ALL, AS PRESENTED BY THE PLAINTIFFS'
17 EXPERT, IT WAS THE ONE AND SOLE NUMBER FOR WHICH HE OFFERED ANY
18 DAMAGE CALCULATION.

19 SECOND, HE DID TESTIFY, AND I WILL HAVE TO LOOK AT
20 THE RECORD, THAT THIS WAS INTENDED TO CAPTURE THE VALUE TO SAP.
21 AND THAT'S REALLY THE KEY POINT HERE, THE FAME OF THE
22 CROSS-EXAMINATION THAT JUST HAPPENED. THE CLEAR ARGUMENT AND
23 EVIDENCE THAT PLAINTIFFS ARE ATTEMPTING TO PRESENT IS THAT SAP
24 WOULD HAVE AGREED TO THIS LICENSE BECAUSE OF ALL THE PROFITS
25 SAP WOULD HAVE MADE -- THAT WAS THAT LAST DIALOGUE ON THE

1 PROJECTIONS AND ASSUMPTION DOCUMENTS, FOR EXAMPLE.

2 THERE IS NO QUESTION THAT NOT ONLY DID THEY DISCLOSE
3 IN THE PRETRIAL STATEMENT THE FAIR MARKET LICENSE AS THE ONE
4 REMEDY THEY WOULD GET ON COPYRIGHT IF THAT WAS AWARDED BY THE
5 JURY, THAT'S HOW THE EVIDENCE HAS COME IN, BOTH FACTUALLY AND
6 FROM THE OPINION TESTIMONY AS WELL.

7 **MR. BOIES:** THERE IS ONE QUALIFICATION TO THAT THAT
8 I THINK IS IMPORTANT, YOUR HONOR.

9 IF THE JURY WERE TO COME BACK AND AWARD THE
10 \$1.65 BILLION THAT MR. MEYER PROPOSED, I THINK I WOULD AGREE
11 WITH COUNSEL THAT THE BETTER VIEW OF THE EVIDENCE WOULD BE THAT
12 THAT INCLUDES INFRINGER PROFITS.

13 HOWEVER, IF THEY CAME BACK WITH 897 MILLION OR SOME
14 OTHER NUMBER LIKE THAT, THEN THAT IS NOT SOMETHING THAT
15 INCLUDES INFRINGER PROFITS.

16 SO, I THINK THERE ARE PROBABLY TWO STEPS IN THE
17 JURY'S ANALYSIS. ONE STEP IS IF THEY COME BACK IN AWARDING THE
18 HYPOTHETICAL LICENSE BASED ON WHAT MR. MEYER HAS PROPOSED,
19 WHICH IS THE \$1.65 BILLION, I THINK I WOULD AGREE THAT THAT
20 INCLUDES THE INFRINGER'S PROFITS.

21 HOWEVER, THAT IS NOT A NECESSARY ELEMENT OF A
22 HYPOTHETICAL LICENSE. AND IF THEY COME BACK WITH SOME OTHER
23 NUMBER, THE JURY IS GOING TO HAVE TO DETERMINE FOR ITSELF
24 WHETHER THAT OTHER NUMBER, DEPENDING ON HOW THE JURY ARRIVES AT
25 IT, DOES OR DOES NOT INCLUDE INFRINGER PROFITS. BECAUSE I

1 THINK, I THINK THE LAW IS CLEAR THAT ACTUAL DAMAGES IS SEPARATE
2 FROM INFRINGER PROFITS EXCEPT TO THE EXTENT THAT THE
3 CALCULATION OF THE ACTUAL DAMAGES INCLUDES INFRINGER PROFITS.

4 I WOULD AGREE THAT THE HYPOTHETICAL LICENSE, AS
5 DEFINED PRECISELY BY OUR EXPERT, DOES INCLUDE THAT. BUT IF YOU
6 HAVE -- IF THE JURY CONCLUDES HYPOTHETICAL LICENSE BUT WE'RE
7 NOT GOING TO GIVE THE \$1.65 BILLION, WE ARE GOING TO COME TO A
8 VALUATION BASED ON SOME OTHER VIEW OF THE EVIDENCE, THEN I
9 THINK THE JURY HAS TO MAKE A SEPARATE DETERMINATION AS TO
10 WHETHER INFRINGER'S PROFITS IS OR IS NOT INCLUDED.

11 **THE COURT:** OKAY.

12 **MR. LANIER:** JUST A COUPLE OF POINTS, YOUR HONOR,
13 AND THEN MR. MC DONNELL MAY HAVE MORE TO ADD.

14 THREE THINGS. FIRST, THE PRACTICAL POINT IS, WHEN
15 ONE ROLLS THE DICE, ONE ENDS UP WITH WHERE THE DICE FALL.
16 THEY'VE ELECTED TO PURSUE AND PRESENT JUST ONE OF THE TWO
17 APPROACHES THAT THEIR OWN EXPERT HAD TAKEN. THERE IS EVIDENCE
18 ABOUT THE SECOND APPROACH THEIR EXPERT TOOK IN THE RECORD
19 ELICITED ON CROSS-EXAMINATION, SO THOSE NUMBERS ARE THERE.
20 THEY ARE AVAILABLE TO THE JURY. AND SO THE JURY COULD ACTUALLY
21 AWARD LOST PROFITS AND INFRINGER'S PROFITS BASED ON PLAINTIFFS'
22 OWN ANALYSIS ON EVIDENCE IN THE RECORD.

23 THE SECOND POINT IS THAT THE -- IN THEIR STATEMENT
24 OF RELIEF SOUGHT IN THE PRETRIAL STATEMENT, ORACLE SAID ON THE
25 COPYRIGHT CLAIMS, HERE'S WHAT WE ARE SEEKING. AND IT DID NOT

1 RESERVE RIGHTS OR SAY THAT'S ONLY IF IT'S THIS BIG A NUMBER, IT
2 SAID, HERE'S WHAT WE ARE SEEKING. AND IT HAS CONSISTENTLY
3 DISCLOSED THE LICENSE THEORY AS THE ONE RECOVERY YOU WOULD GET
4 ON THE COPYRIGHT CLAIM. THERE, OF COURSE, HAS BEEN OTHER
5 CLAIMS, BUT THEY ARE NOT NECESSARY TO ADDRESS AT THIS POINT.

6 SO BOTTOM LINE, I CERTAINLY APPRECIATE THE PRACTICAL
7 ANALYSIS MR. BOIES IS GIVING. OF COURSE, IF THE NUMBER ISN'T
8 BIG ENOUGH, THEY WON'T FEEL LIKE THEY GOT WHOLLY COMPENSATED,
9 BUT THAT'S NOT THE ISSUE FOR THE COURT.

10 THE ISSUE IS, DOES THE FAIR MARKET VALUE LICENSE, AS
11 PRESENTED BY PLAINTIFFS', SUBSTITUTE FOR THE OTHER TWO MEASURES
12 OF DAMAGES THAT ARE POSSIBLE, IT DOES AS PRESENTED BY THEM.
13 THE JURY, WE THINK, SHOULD BE ALLOWED TO BE GIVEN THE CHOICE
14 AND THERE IS EVIDENCE IN THE RECORD OF BOTH SIDE'S POSITIONS ON
15 THAT ALTERNATIVE APPROACH.

16 **THE COURT:** OKAY. ALL RIGHT. ANYTHING ELSE ON THAT
17 ONE?

18 **MR. BOIES:** NO, YOUR HONOR.

19 **THE COURT:** I AGREE WITH DEFENDANTS. I THINK THAT
20 THE HYPOTHETICAL LICENSE DOES INCLUDE THE INFRINGER'S PROFITS
21 REGARDLESS OF WHAT NUMBER THE JURY COMES BACK WITH. SO THAT
22 SETTLES THAT PART OF IT.

23 BUT YOU RAISED ANOTHER SUB-ISSUE THAT I WOULD LIKE
24 TO HEAR YOU ALL OPINE ON, AND THAT IS THE WHOLE QUESTION OF
25 WHETHER OR NOT THE JURY GETS TO MAKE THE ELECTION.

CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, FRIDAY, NOVEMBER 19, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



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SATURDAY, NOVEMBER 20, 2010