

EXHIBIT E

CERTIFIED COPY

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 13
)	
SAP AG, ET AL.,)	PAGES 2231 - 2267
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	TUESDAY, NOVEMBER 23, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258
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Text Removed - Not Relevant to Motion

MR. LANIER: VERY BRIEFLY, YOUR HONOR, ONE ISSUE RELATING TO THE REBUTTAL CLOSING ARGUMENT YESTERDAY. ONCE WE GOT THE TRANSCRIPT, WE REALLY REFLECTED ON THIS. WE THINK -- AND WE'RE -- AGAIN, WE'RE SURE UNINTENTIONALLY, A STATEMENT WAS MADE IN ARGUMENT THAT WE THINK ACTUALLY IS AN INCURABLE ERROR. IT MIGHT BE A BASIS FOR A NEW TRIAL, WHICH WAS AN APPEAL -- AN EXAMPLE BY MR. BOIES OF AN EXAMPLE OF STEALING, WHICH IS A DIFFERENT ISSUE, FROM BEST BUY, WHO IS THE EMPLOYER OF ONE OF THE JURORS.

THAT SECOND PART, WE THINK, IS INCURABLE. DON'T IGNORE -- DON'T PAY ANY ATTENTION TO TESTIMONY ABOUT ONE OF YOUR EMPLOYERS, JURORS. WE THINK THAT WOULD BE INCURABLE AND MAY BE A BASIS WE RAISE LATER. BUT WE DON'T ASK FOR AN INSTRUCTION ON THAT NOW.

THE STEALING POINT WE DO THINK IS WORTH A BRIEF NEUTRALLY PHRASED CURATIVE INSTRUCTION FROM THE COURT. YOU MAY HAVE HEARD TESTIMONY ABOUT STEALING. THIS IS A CASE ABOUT COPYRIGHT INFRINGEMENT, NOT THEFT, SOMETHING LIKE THAT THAT DOESN'T SINGLE OUT EITHER SIDE.

1 **MR. BOIES:** YOUR HONOR, I DON'T THINK THAT THE
2 ANALOGY RAISES THAT PROBLEM AT ALL. FROM THE WITNESS STAND,
3 WITHOUT OBJECTION, WITNESSES TESTIFIED ABOUT USING A CROWBAR TO
4 BREAK INTO A HOUSE AND BURGLARIZE IT AND CLEAN IT OUT. THAT WAS
5 RECOGNIZED AS AN ANALOGY. THEY DIDN'T OBJECT TO THAT AT ALL AT
6 THE TIME. I DON'T THINK THEY CAN OBJECT TO THE BEST BUY
7 ANALOGY.

8 **THE COURT:** I'M NOT AS BOTHERED BY THE ANALOGY AS THE
9 BEST BUY -- I TOTALLY FORGOT THAT ONE OF THE WITNESSES WAS A
10 BEST BUY EMPLOYEE.

11 **MR. LANIER:** AND, CANDIDLY, WE HAD FORGOTTEN THAT,
12 TOO. AND UNTIL WE GOT THE RECORD AND DO WHAT WE ALWAYS DO,
13 WHICH IS READ IT. AND IT'S ALSO WHY WE DON'T -- WE DON'T KNOW
14 THAT THAT'S CURABLE NOW. AND, FRANKLY, THE ATTEMPT TO CURE IT
15 MIGHT MAKE IT WORSE. SO WE'RE NOT ASKING FOR A CURATIVE
16 INSTRUCTION ON THAT POINT.

17 I MEAN, ALL WE'LL SAY ON THE -- THE STEALING POINT IS
18 THAT YOUR HONOR HAD GIVEN SPECIFIC DIRECTION IMMEDIATELY BEFORE
19 ARGUMENT AND IN A COMMENT, "AND IF YOU THINK ABOUT IT IN
20 COMMON-SENSE TERM, IF SOMEBODY GOES IN AND STEALS A GAME," AND
21 IT GOES FROM THERE.

22 AND SO THE DIRECTION TO ARGUMENT THAT -- THAT IS OUR
23 OBJECTION THAT WE DO THINK A, AGAIN, NEUTRALLY PHRASED CURATIVE
24 INSTRUCTION MIGHT BE OF SOME VALUE.

25 **THE COURT:** YEAH, I'M NOT -- I'M NOT ENTIRELY SURE

1 THAT -- THAT A CURATIVE INSTRUCTION IS NECESSARY. I MEAN, KEEP
2 IN MIND THAT I THINK THAT REASONABLE JURORS MIGHT DIFFER ON
3 WHETHER OR NOT THE PLAINTIFFS SHOULD HAVE BEEN ABLE TO
4 CHARACTERIZE THE CONDUCT AS THEFT OR STEALING.

5 IT'S JUST THAT I FOUND IT TO BE UNNECESSARILY
6 INFLAMMATORY AND UNNECESSARY IN THIS KIND OF CASE, PARTICULARLY
7 GIVEN THE -- THE STIPULATION AS TO LIABILITY.

8 SO I DON'T THINK THAT I WANT TO GO SO FAR AS TO DRAW
9 FURTHER ATTENTION TO THE USE OF THAT KIND OF LANGUAGE, WHICH I
10 CERTAINLY PROHIBITED WITH RESPECT TO THE INFRINGEMENT. BUT BY
11 WAY OF THE ANALOGIES, THEFT OF THE WATCH, THE CROWBAR TO THE
12 CAR, AND THE VIDEO -- STEALING OF VIDEOTAPE, I DON'T THINK THAT
13 I'M GOING TO DO THAT.

14 **MR. LANIER:** UNDERSTOOD, YOUR HONOR.

15 **THE COURT:** ALTHOUGH I CERTAINLY DO UNDERSTAND THE
16 POSITION OF THE DEFENSE.

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Text Removed - Not Relevant to Motion

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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 C07-01658PJH, ORACLE USA, INC, ET AL. V. SAP AG, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, ON TUESDAY, NOVEMBER 23, 2010, 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.

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



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

TUESDAY, NOVEMBER 23, 2010