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21 Attorneys for Plaintiffs Oracle USA, Inc., *et al.*

22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

24 ORACLE USA, INC., *et al.*,

25 Plaintiffs,

26 v.

27 SAP AG, *et al.*,

28 Defendants.

No. 07-CV-01658 PJH (EDL)

[PROPOSED] ORDER GRANTING
 ORACLE'S MOTION FOR CERTIFICATION
 FOR INTERLOCUTORY REVIEW
 PURSUANT TO 28 U.S.C. § 1292(b)

1 Before the Court is the Motion for Certification for Interlocutory Review Pursuant
2 to 28 U.S.C. § 1292(b) (the “Motion”) filed by Plaintiff Oracle International Corporation. After
3 considering the pleadings, memoranda, and supporting papers submitted by the Parties, and
4 having heard the arguments of counsel, **IT IS HEREBY ORDERED** that Oracle’s Motion is
5 **GRANTED**.

6 The Court amends its Order Granting Defendants’ Motion for JMOL, and Motion
7 for New Trial; Order Denying Plaintiffs’ Motion for New Trial; Order Partially Vacating
8 Judgment (the “Post-Trial Order”) to certify the Post-Trial Order for interlocutory review,
9 pursuant to 28 U.S.C. 1292(b) and Fed. R. App. Proc. 5(a)(3). The Post-Trial Order involves the
10 following controlling question of law as to which there is substantial ground for difference of
11 opinion and an immediate appeal may materially advance the ultimate termination of the
12 litigation:

13 Whether copyright damages based upon the amount a willing buyer would
14 reasonably have had to pay a willing seller under a hypothetical license requires the copyright
15 owner to provide evidence of (a) actual licenses it entered into or would have entered into for the
16 infringed works and/or (b) actual “ benchmark” licenses entered into by any party for
17 comparable use of the infringed or comparable works.

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19 **IT IS SO ORDERED.**

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21 DATED: _____, 2011

22 Hon. Phyllis J. Hamilton
23 United States District Court Judge
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