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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, as clarified by the Order of
9 September 16, 2011 (“Clarification Order”), and the Clarification Order, for interlocutory
10 review, pursuant to 28 U.S.C. 1292(b) and Fed. R. App. Proc. 5(a)(3). The Post-Trial Order, as
11 clarified by the Clarification Order, and the Clarification Order itself, involve the following
12 controlling questions of law as to which there is substantial ground for difference of opinion and
13 an immediate appeal may materially advance the ultimate termination of the litigation:

14 1. Whether copyright damages measured by the amount a willing buyer would
15 have paid a willing seller for a hypothetical license to the rights infringed are sufficiently
16 established by evidence of: (a) the infringer’s contemporaneous projections of the profits it
17 would realize from use of the rights, (b) the copyright owner’s contemporaneous evidence
18 valuing the business it would lose if it licensed those rights, and (c) reliable expert testimony as
19 to the fair market value of a hypothetical license to the rights, based upon that evidence.

20 2. Whether a jury’s assessment of the fair market value of the rights infringed
21 may be set aside as speculative when based upon such objective evidence.

22 3. Whether a jury’s verdict falling within the reasonable range of hypothetical-
23 license damages established by such objective evidence, may be set aside as excessive.

24
25 **IT IS SO ORDERED.**

26
27 DATED: _____, 2011

28 Hon. Phyllis J. Hamilton
United States District Court Judge