

EXHIBIT B

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 12
)	
SAP AG, ET AL.,)	PAGES 2021 - 2230
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	MONDAY, NOVEMBER 22, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BINGHAM MCCUTCHEN 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 SLIGHTLY. SO THESE ARE NO LONGER TOMORROWNOW'S NUMBERS, THEY
2 ARE TOMORROWNOW'S NUMBERS REVISED FOR REALITY, AND THAT GOES TO
3 308.

4 AND WHEN YOU STUDY THIS DOCUMENT, YOU CAN COMPARE
5 THE LAST DOCUMENT AND THIS DOCUMENT WITH THE NET INCOME LINE,
6 AND YOU WILL SEE THAT WHEN IT WAS REVISED TO REALITY FROM
7 TOMORROWNOW'S NUMBERS TO SAP'S NUMBERS, THESE NET INCOME
8 NUMBERS GO DOWN. THAT'S BECAUSE THE COSTS WERE GOING UP.

9 AGAIN, MEYER IGNORED THAT IN HIS RUSH TO FIND A
10 NUMBER LIKE 3,000, HE LOOKS AT THE ZIEMEN DOCUMENT WHICH IS
11 APPLES AND ORANGES, AND HE NOT ONLY MAKES A MISTAKE OF USING
12 3,000 FOR SAP'S EXPECTATIONS, BUT HE USES THE SAME NUMBER FOR
13 ORACLE'S EXPECTATIONS.

14 THEIR LUMP SUM APPROACH IS ALSO TOO UNREASONABLE.
15 AND THIS IS WHERE WE GET INTO THE REALITY CHECK, THE BOOK OF
16 WISDOM.

17 THE COURT WILL INSTRUCT YOU THAT YOU CAN USE WHAT
18 ACTUALLY HAPPENED IF IT PROVIDES AN INSIGHT INTO WHAT THE
19 PARTIES WOULD HAVE BEEN THINKING AT THE TIME. WHAT THEY WOULD
20 HAVE BEEN THINKING AT THE TIME.

21 AND THINK ABOUT IT THIS WAY. WHEN MR. ELLISON COMES
22 IN AND SAYS, YOU KNOW, WE COULD HAVE LOST 2,000 TO 3,000
23 CUSTOMERS, THE QUESTION FOR HIM UNDER THE REALITY CHECK IS,
24 YOU'VE GOT A VERY SUCCESSFUL COMPANY. YOU HAVE GOT REALLY
25 SMART FORECASTERS DOWN THERE. ARE WE REALLY TO BELIEVE YOU

1 HE TESTIFIED THREE YEARS AGO WHEN HE WAS ON THE OTHER SIDE.
2 AND IN THIS OTHER CASE, HE TESTIFIED WHEN HE'S STILL DOING THE
3 FAIR MARKET VALUE HYPOTHETICAL NEGOTIATION, THIS IS WHAT HE
4 TESTIFIED.

5 "YOU WANT TO BE AWARE OF WHAT HAPPENS IN THE
6 FUTURE TO MAKE SURE YOU GET THE PROPER RESULT AT
7 THE TIME OF THE HYPOTHETICAL."

8 COMMON SENSE. IT PROVIDES AN INSIGHT.
9 "SO WE ARE SORT OF USING SOME MONDAY MORNING
10 QUARTERBACKING AND HINDSIGHT TO HELP US, BUT
11 WE'RE ABLE TO DO THAT IF WE DO IT IN A WAY
12 THAT'S REASONABLE."

13 SO IN THAT CASE WHERE IT HELPED HIM, HE DID WHAT WAS
14 RIGHT, HE USED A REALITY CHECK. IN THIS CASE WHERE HE KNOWS IT
15 WOULDN'T HELP HIM, HE DIDN'T USE A REALITY CHECK.

16 IN THE BOEING CASE, I ASKED HIM THIS. REMEMBER, IN
17 THE BOEING CASE, INSTEAD OF COMING IN AND SAYING YOU CAN ONLY
18 DO THIS ON A LUMP SUM BECAUSE ONE COMPANY -- THE GOVERNMENT HAD
19 ALREADY PAID FOR THE PATENT AND SO IT WOULD HAVE A LOT OF
20 UNCERTAINTY IF IT DIDN'T KNOW HOW MUCH IT WAS GOING TO GET AND
21 IT HAD ALREADY INVESTED ALL THIS MONEY, SO HE JUST WOULD HAVE
22 TO HAVE A LUMP SUM. HE DIDN'T SAY THAT.

23 IN BOEING HE SAID: "A RUNNING ROYALTY IS THE ONLY
24 THING THAT MAKES SENSE."

25 AND HIS RUNNING ROYALTY WAS 3.75 PERCENT OF SALES

1 WHEN YOU SAY YOU THINK YOU WOULD HAVE THOUGHT THAT YOU COULD
2 HAVE LOST 3,000 CUSTOMERS WHEN WE KNOW YOU ONLY LOST 358? HOW
3 COULD YOU BE SO WRONG? THAT'S THE REALITY CHECK.

4 THEY HAVE NEVER EXPLAINED WHAT THEY WERE THINKING OR
5 IF THEY WOULD HAVE BEEN THINKING THEY WOULD LOSE 3,000
6 CUSTOMERS. HOW COULD THEY BE SO WRONG? AND THE FACT THAT
7 3,000 IS SO DIFFERENT FROM 358 SUGGESTS THAT MAYBE YOU
8 SHOULDN'T GIVE TOO MUCH CREDIT, TOO MUCH CREDENCE TO THEM WHEN
9 THEY COME IN AND SAY WE THOUGHT WE WOULD HAVE -- COULD HAVE

10 LOST 20 TO 30 PERCENT. YOU USE REALITY TO PROVIDE INSIGHT INTO
11 WHAT THEY REALLY WOULD HAVE BEEN THINKING AT THE TIME.

12 SO, MR. MEYER SAYS:
13 THERE'S NO REASON TO HAVE TO DO A REALITY CHECK.
14 I DON'T HAVE TO DO A REALITY CHECK GOING PASSED
15 THE DATE OF THE HYPOTHETICAL.

16 AND HE'S SAYING THAT BECAUSE IF YOU DO A REALITY
17 CHECK, THERE IS NO WAY YOU CAN SELL 3,000 CUSTOMERS WHEN ONLY
18 358 ACTUALLY BOUGHT.

19 DURING THIS TRIAL HE TESTIFIED UP AT THE TOP, I
20 ASKED HIM:

21 "SO NO MONDAY MORNING QUARTERBACKING, NO
22 HINDSIGHT TO HELP US OUT; THAT'S YOUR POSITION?"

23 HE SAYS: "THAT'S MY POSITION ABOUT THE FAIR
24 MARKET VALUE OF THE LICENSE."

25 WELL, I ASKED HIM THAT QUESTION BECAUSE I KNEW WHAT

1 AND THE COURT FOUND HE WAS THREE TIMES TOO HIGH.
2 THIS IS WHAT HAPPENED.

3 "DO YOU REMEMBER IN THE BOEING CASE, THE COURT SAID
4 THAT BECAUSE YOUR BASELINE WAS LITTLE MORE THAN CONJECTURE IT
5 MATTERS LITTLE HOW YOU APPLIED THE OTHER GEORGIA-PACIFIC
6 FACTORS BECAUSE PLUS OR MINUS A GUESS IS, AFTER ALL, STILL A
7 GUESS?"

8 AND HE SAID -- "DO YOU REMEMBER THAT?"
9 "I RECALL READING THE JUDGE'S DECISION."

10 DO YOU REMEMBER READING THAT PART?
11 "I JUST SAID THAT."

12 BUT ON THE ROYALTY RATE THE COURT FOUND YOUR
13 OPINION WAS TOO SPECULATIVE TO STAND.

14 WELL HE, HE DID SAY THAT HE DIDN'T LIKE THE
15 ROYALTY RATE AND HE USED LANGUAGE THAT YOU HAVE.

16 AND HE SAID IT BORE LITTLE RELATIONSHIP TO WHAT
17 A WILLING BUYER AND A WILLING SELLER WOULD USE

18 IN THE REAL WORLD. I DON'T HAVE IT IN FRONT OF
19 ME, BUT IF THAT'S WHAT YOU HAVE IN THE OPINION,

20 HE SAID A FEW THINGS LIKE THAT.
21 AND, WELL, HE REJECTED YOUR ROYALTY RATE AS

22 THREE TIMES TOO HIGH?
23 I'VE ALREADY SAID THAT.

24 AND HE FOUND YOUR APPROACH ON THIS ROYALTY RATE
25 WAS CAPRICIOUS, CORRECT?

1 WE CAN LOOK AT HIS LANGUAGE, BUT HE WAS PRETTY
 2 AGGRESSIVE IN HIS LANGUAGE, THAT'S CORRECT.
 3 WHERE THERE HE WAS ARBITRARY, HE SPECULATED AND HE
 4 CAME AND PUT THE ROYALTY RATE THAT WAS THREE TIMES TOO HIGH.
 5 WHAT HE DID IN THAT CASE MAKES WHAT HE DID HERE LOOK LIKE
 6 CHILD'S PLAY.
 7 HE IS WAY, WAY TOO HIGH. IF ONLY HE HAD DONE A
 8 REALITY CHECK.
 9 WHAT DOES MR. MEYER (SIC) SAY? MR. MEYER (SIC)
 10 SAYS:
 11 "I THINK IT'S IMPERATIVE IN THESE CASES THAT YOU
 12 SEE WHETHER THE ANSWERS YOU'RE COMING UP WITH
 13 MAKE SENSE WHEN YOU KNOW WHAT YOU KNOW
 14 DOWNSTREAM. THAT'S VERY MUCH THE CASE HERE.
 15 AND I THINK THAT MY LICENSE MAKES SENSE WHEN YOU
 16 CONSIDER WHAT THE ACTUAL USE WAS AND HOW
 17 SUCCESSFUL OR UNSUCCESSFUL THESE PROGRAMS
 18 ACTUALLY WERE."
 19 THAT'S THE BEAUTY OF A RUNNING ROYAL. BEAUTY OF A
 20 RUNNING ROYALTY IS YOU SET THE RATE, THE VALUE AT THE TIME, AND
 21 THEN YOU SEE HOW IT PLAYS OUT.
 22 NOW, ORACLE SAYS THAT THE WAY WE KNOW THIS VALUE ON
 23 THIS LUMP SUM IS SUPPOSED TO BE REALLY HIGH IS BECAUSE SAP TOOK
 24 THIS REALLY BIG RISK.
 25 WHAT IS WRONG WITH THAT ARGUMENT? IT IS A CIRCULAR

1 WHEN THEY ARE TRYING TO TALK ABOUT SAP'S
 2 EXPECTATIONS AND THEY'RE TRYING TO TURN ZIEMEN'S ASSUMPTIONS
 3 INTO EXPECTATIONS SO FIRM THAT WE WOULD WRITE A BILLION DOLLAR
 4 CHECK ON IT? THE ONE THAT GOT ME GOING WHEN THEY WERE QUIZZING
 5 MEYER AND ALSO JUST A COUPLE OF HOURS AGO, WAS THIS ONE, CHART
 6 169.
 7 (SLIDE DISPLAYED ON SCREEN.)
 8 THE ZIEMEN DOCUMENT, EVERYBODY KNOWS BY NOW IS
 9 DECEMBER 23, 2004. AND THAT'S THE DOCUMENT WITH THE 3,000
 10 ASSUMED CUSTOMERS. EVERYBODY ALSO KNOWS THAT THE BUSINESS CASE
 11 IS JANUARY 7, AND THAT'S THE ONE THAT HAS 300 CUSTOMERS.
 12 SO THEY SHOW, JUST NOW, WHEN HE WAS GIVING YOU HIS
 13 TALK, HE SAID, AND MR. AGASSI SAID, THEY COULD DO EVEN BETTER
 14 THAN ZIEMEN'S NUMBERS. BUT I WILL SHOW THIS TO YOU AGAIN.
 15 THE QUESTION TO AGASSI IS:
 16 "DID YOU HAVE ANY REASON TO QUESTION THE
 17 PROJECTIONS EITHER IN THE ONE PRESENTED IN THE
 18 JANUARY 7, 2000 (SIC) BUSINESS PLAN OR," AND
 19 THEN THEY STUCK IN 50 PERCENT CUSTOMER GOAL,
 20 THAT IS NOT IN THE TESTIMONY, "OR SUBSEQUENTLY?"
 21 "I THOUGHT WE COULD, WE COULD DO BETTER."
 22 HE'S SAYING WE COULD DO BETTER THAN THE JANUARY 7,
 23 2005 PLAN FOR 300 CUSTOMERS, WHICH WAS BEFORE IT. HE'S NOT
 24 SAYING WE COULD DO BETTER THAN THE 3,000 THAT WAS IN ZIEMEN'S
 25 DOCUMENT.

1 ARGUMENT. THEY ARE SAYING AND I HAVE GOT THEIR CHART HERE.
 2 HERE IS MY FAVORITE CHART. THIS IS 72.
 3 (SLIDE DISPLAYED ON SCREEN.)
 4 THEY SAY SAP CHOSE TO TAKE THE RISK BECAUSE IT KNEW
 5 THAT IT WOULD COST BILLIONS OF DOLLARS TO BUY A LICENSE. SO WE
 6 TOOK THIS ENORMOUS RISK BECAUSE IT WAS GOING TO COST US
 7 BILLIONS OF DOLLARS TO BUY A LICENSE.
 8 WHERE DOES THAT COME FROM? HOW ABOUT YOU PUT IN
 9 THERE 40 MILLION, WHICH IS CLARKE'S NUMBER. THIS IS CIRCULAR.
 10 THEY SAY IT'S AN ENORMOUS RISK BECAUSE THEY SAY IT'S A HIGH
 11 NUMBER. IT'S SELF-FULFILLING. THEY JUST STICK BILLIONS OF
 12 DOLLARS IN THERE AS IF THAT MAKES IT LOOK LIKE WE TOOK THIS
 13 ENORMOUS RISK.
 14 I AM NOT PROUD OF THIS AND SAP SHOULDN'T BE PROUD OF
 15 THIS. YOU SAW THAT EARLY DOCUMENT WHERE THEY SAID WE ARE GOING
 16 TO USE TOMORROWNOW AS A LIABILITY SHIELD. THEY'LL STAY
 17 INCORPORATED IN TEXAS AND THEY WILL HAVE THE LIABILITY. BAD
 18 IDEA. WE ARE NOT STANDING BEHIND THAT. SAP IS HERE TO PAY THE
 19 DAMAGES AWARDED AGAINST TOMORROWNOW, BUT THAT TELLS YOU
 20 SOMETHING ABOUT WHAT THEY THOUGHT THE RISK WAS AT THE TIME.
 21 AGAIN, BAD IDEA. THAT WAS NOT A GOOD WAY TO DO IT,
 22 BUT IT SORT OF PROVIDES A LITTLE OFFSET TO THEIR ARGUMENT THAT,
 23 WELL, THERE WAS THIS ENORMOUS RISK BECAUSE THERE WAS GOING TO
 24 BE THIS HUGE JUDGMENT.
 25 IF YOU WILL FORGIVE ME, I WANT TO GO BACK ONE STEP.

1 OKAY. I AM COMING NOW TO THE RUNNING ROYALTY. IF
 2 THE HYPOTHETICAL LICENSE APPROACH WERE GOING TO WORK AT ALL, IT
 3 WOULD ONLY WORK ON A RUNNING ROYALTY BASIS. WHY IS THAT?
 4 BECAUSE THAT'S THE ONLY ONE THAT SHARES THE RISK. IT DOESN'T
 5 GIVE ORACLE EVERYTHING THEY WANT. IT DOESN'T GIVE TOMORROWNOW
 6 EVERYTHING IT WANTS, BUT IT SHARES THE RISK.
 7 UNLIKE A LUMP SUM WHICH PUTS THE RISK ON ONE PARTY
 8 IF THEY ARE TOO HIGH OR TOO LOW, THIS ONE YOU SET THE RATE AND
 9 THEN YOU SEE HOW IT PLAYS OUT.
 10 NOW, THEY SAY THEY DON'T LIKE THE RUNNING ROYALTY
 11 BECAUSE THEY WOULD LOSE MONEY. THEY WOULDN'T MAKE AS MUCH
 12 MONEY ON THE RUNNING ROYALTY AS IF THEY HAD KEPT THE CUSTOMER.
 13 BUT WHAT THE MISTAKE THEY MADE IS THEY ARE
 14 ASSUMING -- THEY MADE TWO MISTAKES. ONE IS THEY MISUNDERSTAND
 15 WHAT MR. CLARKE TESTIFIED VERY CLEARLY. HE IS GIVING THEM
 16 50 PERCENT OF ALL OF TOMORROWNOW'S REVENUES. NOT THE PROFIT
 17 BECAUSE THEY DIDN'T MAKE PROFIT. HE IS BEING GENEROUS IN
 18 GIVING THEM 50 PERCENT OF ALL OF TOMORROWNOW'S REVENUES. HE IS
 19 NOT JUST GIVING HIM -- GIVING THEM THE 50 PERCENT ON CUSTOMERS
 20 THAT WOULDN'T HAVE LEFT ORACLE ANYWAY.
 21 SO, WE HAVE ALL AGREED THAT OUT OF THE 358
 22 TOMORROWNOW CUSTOMERS, THERE ARE SOME CUSTOMERS IN THERE THAT
 23 WOULD HAVE LEFT ORACLE ANYWAY. SO THEY WERE GOING TO LOSE THE
 24 PROFIT ON THEM ANYWAY.
 25 MR. MEYER AND MR. CLARKE DISAGREE ON HOW MANY OF

1 AND AS WE HAVE SEEN IN ALL THESE NUMBERS, THERE'S NO
2 REASON TO THINK THAT ANY CUSTOMER SWITCHED FROM ORACLE TO SAP
3 FOR SOFTWARE BECAUSE OF THE LITTLE SAVINGS AT TOMORROWNOW. SO
4 MEYER'S TOTAL WOULD BE 272 FOR THE SAME TIME PERIOD; CLARK'S
5 TOTAL IS 28 MILLION.

6 THEY HAVE TALKED ABOUT THE GOAL OF DISRUPTING
7 ORACLE. THEY HAVE PUT ON NO EVIDENCE THAT THERE WAS ANY HARM
8 TO THEM FROM DISRUPTION.

9 THEY TALKED ABOUT, WELL, THEY HAVE GOT \$4 BILLION IN
10 R&D THAT THEY SPEND EVERY YEAR. THEY HAVE NOT SAID ANYTHING
11 ABOUT HOW LOSING FOUR CUSTOMERS OR \$19 MILLION HAD ANY EFFECT
12 WHATSOEVER ON THEIR \$4 BILLION RESEARCH AND DEVELOPMENT BUDGET.
13 AGAIN, IT'S HIT AND RUN. THEY SAY IT, BUT THEY DON'T TRY AND
14 PROVE IT.

15 (COUNSEL AT EASEL.)

16 ANDREW NELSON. LET ME JUST TAKE ONE MINUTE ON
17 ANDREW NELSON AND HIS \$1 AND \$18 IN CASE THAT COMES BACK ON
18 REBUTTAL.

19 THEY HAVE A CHANCE TO TALK TO YOU AGAIN. I DON'T
20 GET TO GET UP AND GIVE AN ANSWER. I AM PRETTY SURE I WOULD
21 HAVE AN ANSWER. AND I ASK YOU TO THINK WHAT THAT ANSWER WOULD
22 BE AND EVALUATE THAT.

23 ALL ANDREW NELSON DID, I WILL JUST HAVE TO HOLD IT,
24 ALL ANDREW NELSON DID WAS TO SAY THAT IF ORACLE CHARGES \$2 FOR
25 SUPPORT, AND TOMORROWNOW CHARGES \$1 FOR SUPPORT, AND IF YOU RUN

1 STILL END UP WITH AN ASSUMPTION.

2 MY CROSS-EXAMINATION OF MEYER FOCUSED ON THE
3 IMPORTANT ISSUES; THE USE OF THE BOOK OF WISDOM, HIS USE OF
4 RUNNING ROYALTIES IN OTHER CASES, AND SO FORTH.

5 THE CROSS-EXAMINATION OF CLARKE DIDN'T. THERE WAS A
6 LOT OF TALK ABOUT CEDARCRESTONE AND WHETHER THEY WERE IN
7 BUSINESS IN 2005. EVEN IF CEDARCRESTONE WASN'T IN BUSINESS IN
8 2005, ON THAT CHART IT SHOWED PLENTY OF OTHERS WHO WERE.

9 WHAT DID IT MATTER ABOUT CEDARCRESTONE? AS IT
10 TURNED OUT, THE DOCUMENT SHOWED CEDARCRESTONE WAS IN BUSINESS
11 FOR UP TO FIVE YEARS BEFORE 2008. YOU REMEMBER THE
12 CROSS-EXAMINATION ON THAT.

13 YOU WILL ALSO REMEMBER WHEN HE WAS QUESTIONED ABOUT
14 SUN DOCUMENTS AND WHERE HE GOT THE INFORMATION. AND THE
15 QUESTION WAS, WELL, IT WOULD BE WRONG, WOULDN'T IT, IT WOULD BE
16 WRONG, WOULDN'T IT, IF YOU DIDN'T HAVE THAT IN YOUR BINDER?

17 I AM SITTING THERE THINKING WELL NEXT THING HE'S
18 GOING TO DO IS PULL OUT THE BINDER. HE DIDN'T. THAT WAS JUST
19 INNUENDO. IT WAS AN INSINUATION THAT THERE'S SOMETHING WRONG
20 WITH THE WITNESS' TESTIMONY. AND IT'S NITPICKING ON CUSTOMERS
21 LIKE SARA LEE THAT BOTH SIDES HAVE EXCLUDED.

22 THE CONCLUSION ON THE DAMAGE SUMMARY ARE THESE
23 NUMBERS.

24 IF WE CAN SWITCH TO THE ELMO.
25 (DOCUMENT DISPLAYED ON ELMO.)

1 THAT OUT NINE YEARS, THAT TURNS OUT TO BE \$18.

2 AND SO WHAT HE SAYS, YOU CAN EVALUATE WHETHER THIS
3 MATH MAKES ANY SENSE OR WHETHER SAP WOULD EVER RELY ON THIS.
4 WHAT HE SAYS, IF WE GET A CUSTOMER AND GET \$1, THAT'S WORTH \$18
5 TO ORACLE.

6 NOT QUITE BECAUSE YOU REALLY HAVE TO DO \$1 EVERY
7 YEAR, SO IT COMES OUT TWO TO ONE. FOR EVERY DOLLAR THAT WE
8 GET, IT COST ORACLE IN SUPPORT \$2. SO THAT CALCULATION THAT
9 THEY USE ONE OUT OF 18 JUST DOESN'T HAVE ANYTHING TO DO WITH
10 THIS, AND IT'S CERTAINLY NO WAY TO CALCULATE DAMAGES.

11 OKAY. I AM ALMOST DONE. WHY VALUE CLARKE'S
12 APPROACH OVER MEYER'S? CLARKE STUDIED THE CUSTOMERS ONE BY
13 ONE. MEYER DIDN'T.

14 DON'T TRUST SOMEBODY WHO DOESN'T BELIEVE IN REALITY
15 CHECKS.

16 DON'T TRUST SOMEBODY WHO DOESN'T LET YOU LOOK UNDER
17 THE HOOD.

18 DON'T TRUST SOMEBODY WHO USES A FOUR-YEAR GAP AND
19 THEN DENIES IT.

20 DON'T TRUST SOMEBODY WHEN HE'S PUT IN A REALLY TOUGH
21 POSITION IN HIS CLIENT TO COME UP WITH A BIGGER NUMBER THAN
22 THERE'S ANY BASIS IN REALITY FOR.

23 DON'T TRUST SOMEBODY LIKE IN THE BOEING CASE WHERE
24 THE COURT CRITICIZED HIM FOR STARTING WITH A GUESS, STARTING
25 WITH AN ASSUMPTION AND THEN ADDING PLUS OR MINUS TO IT. YOU

1 THIS IS GOING TO BE THE VERDICT FORM THAT THE COURT
2 GIVES YOU.

3 AND THE FIRST QUESTION WILL BE ACTUAL DAMAGES FOR
4 COPYRIGHT INFRINGEMENT. AND IT SAYS:

5 WHAT IS THE DOLLAR AMOUNT THAT ORACLE IS ENTITLED TO
6 FROM DEFENDANTS TO COMPENSATE ORACLE FOR ITS ACTUAL DAMAGES
7 UNDER THE COPYRIGHT INFRINGEMENT CLAIM IN THE FORM OF" AND
8 HERE'S WHERE YOU HAVE YOUR CHOICE. EITHER A FAIR MARKET VALUE
9 LICENSE FOR COPYRIGHT INFRINGEMENT OR LOST PROFITS?

10 AND SO ONE WAY TO FILL THIS OUT, AND I DON'T MEAN TO
11 BE PRESUMPTUOUS, I'M JUST SAYING WHERE OUR NUMBERS WOULD COME
12 OUT. IT'S UP TO YOU TO DECIDE.

13 ONE WAY TO FILL THIS OUT WOULD BE TO PUT IN CLARKE'S
14 NUMBER FOR LOSS PROFITS, 19.3 MILLION.

15 AND THEN IT SAYS: "IF YOU ASSIGNED ACTUAL DAMAGES
16 IN THE FORM OF FAIR MARKET VALUE, PLEASE PROCEED TO THE END."
17 SO THAT WOULD BE IT.

18 "IF YOU ASSIGNED ACTUAL DAMAGES IN THE FORM OF LOST
19 PROFITS," WHICH I HAVE, "PLEASE PROCEED TO THE NEXT." AND THE
20 NEXT IS: INFRINGERS' PROFITS. THESE ARE THE SOFTWARE SALES.

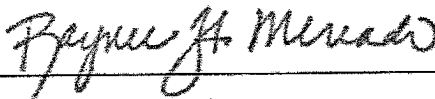
21 "WHAT IS THE DOLLAR AMOUNT THAT ORACLE IS ENTITLED
22 TO FROM DEFENDANTS AS INFRINGERS' PROFITS FOR THE COPYRIGHT
23 INFRINGEMENT?"

24 AND HERE CLARKE'S NUMBER IS 8.7 MILLION. AND THAT
25 INCLUDES, LET ME WRITE THIS WITH A SMALLER PEN, THAT INCLUDES

1
2
3 CERTIFICATE OF REPORTER

4 WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL
5 REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF
6 CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN
7 C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE
8 REPORTED BY US ON, MONDAY, NOVEMBER 22, 2010, CERTIFIED
9 SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR
10 DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL,
11 COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT
12 THE TIME OF FILING.

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

16
17 

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

19
20 

21 DIANE E. SKILLMAN, CSR, RPR, FCRR

22
23 TUESDAY, NOVEMBER 23, 2010
24
25