

EXHIBIT 18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)
)
 PLAINTIFFS,) NO. C 07-01658 PJH
)
 VS.)
)
 SAP AG, ET AL.,) PAGES 1 - 296
)
 DEFENDANTS.) OAKLAND, CALIFORNIA
) MONDAY, NOVEMBER 1, 2010
 _____)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607
BY: ZACHARY J. ALINDER,
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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

1 MY ONLY CONCERN IN THIS IS THE USE OF THE WORD
2 "THEFT". THIS IS NOT A THEFT CASE. THIS IS AN INFRINGEMENT
3 CASE. THE WORDS ARE TERMS OF ART. AND I AGREE THAT THAT'S
4 MORE ARGUMENTATIVE THAN ACCURATE.

5 SO, I AM GOING TO -- I DON'T WANT YOU TO USE THE
6 WORD "THEFT" THROUGHOUT THE COURSE OF THE OPENING STATEMENT.
7 BUT OTHERWISE, I AGREE WITH THE THREE CATEGORIES. I THINK YOU
8 CAN PUT ON SOME EVIDENCE AS LONG AS IT GOES TO THE QUESTIONS
9 THAT YOU'VE RAISED WITH RESPECT TO HOW THE DAMAGES ARE TO BE
10 VALUATED AND PROVIDE SOME CONTEXT. AND I THINK THAT THAT'S --
11 SAP'S IN THAT POSITION AND THAT'S HOW IT IS GOING TO HAVE TO
12 BE.

13 MR. LANIER: WE UNDERSTAND, YOUR HONOR.

14 THE COURT: TAKE THE WORD "THEFT" OUT AND I'M FINE
15 WITH WHAT YOU'RE DOING.

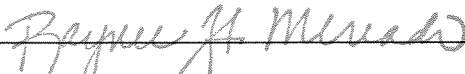
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CERTIFICATE OF REPORTER

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, MONDAY, NOVEMBER 1, 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 REPORTERS' CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



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

DIANE E. SKILLMAN, CSR, RPR, FCRR

TUESDAY, NOVEMBER 2, 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)
) NO. C 07-01658 PJH
)
) PLAINTIFFS,)
) JURY TRIAL
) VS.) VOLUME 2
)
)
) SAP AG, ET AL.,) PAGES 297 - 479
)
)
) DEFENDANTS.) OAKLAND, CALIFORNIA
)
) TUESDAY, NOVEMBER 2, 2010

(PAGES 297 THROUGH 312 ARE UNDER SEAL AND BOUND SEPARATELY)

TRANSCRIPT OF PROCEEDINGS

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20 (DEMONSTRATIVE PUBLISHED TO JURY.)

21 MR. HOWARD: WE TALKED ABOUT THE MAINTENANCE SUPPORT
22 FEES THAT CUSTOMERS PAY. AND I TOLD YOU THAT MAINTENANCE WAS
23 IMPORTANT BECAUSE THAT'S HOW ORACLE DEVELOPS THE SUPPORT FOR THE
24 PRODUCTS AND BUILDS THE NEXT VERSION OF THE SOFTWARE. AND IT'S
25 NOT A SMALL NUMBER. ORACLE INVESTS BILLIONS OF DOLLARS EVERY

1 YEAR INTO ITS PRODUCTS, BILLIONS OF DOLLARS EVERY YEAR INTO
2 DEVELOPING ITS SOFTWARE. AND YOU CAN SEE THAT IT INCREASES THAT
3 AMOUNT, \$3.3 BILLION THIS YEAR, \$4 BILLION IN THE NEXT FISCAL
4 YEAR.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

6 MR. HOWARD: I TOLD YOU THAT ORACLE WAS QUITE A BIT
7 SMALLER THAN SAP IN 2004 IN ENTERPRISE APPLICATION SOFTWARE.
8 ORACLE HAD TRIED, AND THE EVIDENCE WILL SHOW, THAT ORACLE HAD
9 TRIED TO CATCH UP. AND IT DECIDED THAT ONE OF THE WAYS THAT IT
10 COULD BE MORE COMPETITIVE WITH SAP WAS TO BUY PEOPLESOFT. WHEN
11 IT DID THAT, SAP, WHICH HAD LONG BEEN THE DOMINANT PLAYER IN
12 THAT MARKET, FELT VERY THREATENED.

13 ORACLE -- THE EVIDENCE WILL SHOW THAT ORACLE'S
14 PURCHASE OF PEOPLESOFT WAS A RISK, AND IT WAS A VERY BIG
15 DECISION FOR ORACLE. THEY PAID OVER \$11 BILLION FOR PEOPLESOFT.
16 EVEN TO THIS DAY, YOU'LL HEAR THE LARGEST ACQUISITION THAT
17 ORACLE HAS EVER MADE, AND THEY'VE MADE A FEW.

18 PEOPLESOFT AT THE TIME WAS A COMPANY WITH ALMOST
19 \$3 BILLION IN ANNUAL REVENUES. AND -- AND THIS IS VERY
20 IMPORTANT -- PEOPLESOFT HAD ALMOST 10,000 CUSTOMERS. AND THE
21 EVIDENCE WILL SHOW THAT THESE CUSTOMERS -- AND I'VE TALKED ABOUT
22 THE MAINTENANCE FEES THAT THESE CUSTOMERS PAY, SO WHAT ORACLE IS
23 GETTING FOR ITS \$11 BILLION IN PART IS THE 10,000 CUSTOMERS THAT
24 PEOPLESOFT HAS, ALL OF THOSE CUSTOMERS PAYING MAINTENANCE FEES,
25 ALL OF THOSE MAINTENANCE FEES ABLE TO BE USED TO PAY FOR THE

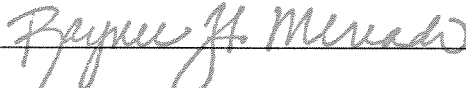
¹ TRANSACTION, TO PAY FOR THE DEAL, AND TO INVEST IN NEW PRODUCT.

TEXT REMOVED - NOT RELEVANT

CERTIFICATE OF REPORTER

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



DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 3, 2010

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.)	
)	
SAP AG, ET AL.,	)	PAGES 480 - 640
)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	THURSDAY, NOVEMBER 4, 2010

(PAGES 485 THROUGH 491 ARE UNDER SEAL AND BOUND SEPARATELY)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

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THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607
BY: ZACHARY J. ALINDER,
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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

TEXT REMOVED - NOT RELEVANT

9 THE COURT: I MEAN, I -- I DON'T MEAN TO SAY I BOUGHT
10 THE ARGUMENT, BUT I WAS PERSUADED THE -- BY YOUR ARGUMENT THAT,
11 INDEED, IT'S RELEVANT. BUT AT SOME POINT, IT BECOMES CUMULATIVE
12 PARTICULARLY GIVEN THAT LIABILITY'S NO LONGER AT ISSUE IN THE
13 CASE.

14 SO I'M NOT GOING TO ALLOW YOU TO JUST HAMMER ON IT
15 OVER AND OVER AGAIN. I UNDERSTAND YOU NEED TO ESTABLISH THE
16 DATES OF KNOWLEDGE AND THE TIME FRAME. BUT IT DOESN'T SEEM TO
17 ME LIKE YOU NEED FOUR BOARD MEMBERS, I THINK IS WHAT YOU
18 REFERRED TO THE OTHER DAY, TO DO THAT.

TEXT REMOVED - NOT RELEVANT

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20 Q. NOW, THE -- THE ACQUISITION OF ORACLE'S ACQUISITION OF
21 PEOPLESOFT, HOW MUCH DID YOU PAY FOR PEOPLESOFT?

22 A. I PAID JUST OVER 11 BILLION.

TEXT REMOVED - NOT RELEVANT


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, THURSDAY, NOVEMBER 4, 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.

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



DIANE E. SKILLMAN, CSR, RPR, FCRR

FRIDAY, NOVEMBER 5, 2010

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 5
)	
SAP AG, ET AL.,	)	PAGES 754 - 946
)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	MONDAY, NOVEMBER 8, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607
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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

TEXT REMOVED - NOT RELEVANT

12 Q. ALL RIGHT. LET'S TALK SPECIFICALLY ABOUT ORACLE'S FINANCIAL
13 MODEL FOR THE PEOPLESOFT AND SIEBEL ACQUISITIONS.

14 AGAIN, WHY DID ORACLE HAVE THOSE PROJECTIONS
15 PREPARED? WHAT ARE THEY USED FOR?

16 A. WELL, THESE PROJECTIONS ARE THE BASIS FOR ASKING PERMISSION
17 FROM THE BOARD OF DIRECTORS TO SPEND 11 -- ACTUALLY MORE THAN
18 \$11 BILLION AND TO TAKE ON ALL THE LIABILITIES THAT COME WITH
19 PEOPLESOFT AND THE ASSETS.

20 SO THOSE MODELS ARE LITERALLY THE KEY JUSTIFICATION
21 TO SPEND \$11.1 BILLION.

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5 Q. NOW SAP'S COUNSEL IN HIS OPENING STATEMENT SAID THAT SAP
6 STANDS READY TO PAY ORACLE \$40 MILLION AS COMPENSATION FOR THE
7 INFRINGEMENT IT HAS NOW ADMITTED TO.

8 WHY HAVEN'T YOU TAKEN THAT OFFER?

9 A. TAKING \$40 MILLION FROM SAP, SAP PAYING US \$40 MILLION IS
10 A REWARD FOR THEIR BAD BEHAVIOR, FRANKLY. IT ACTUALLY, FOR
11 PEOPLE WHO SAY THEY ARE TAKING RESPONSIBILITY FOR EVERYTHING
12 THEY DID, THIS IS EXACTLY THE OPPOSITE OF THAT.

13 THIS IS LIKE TAKING SOMEONE'S WATCH AND HOCKING IT.
14 SAY IT'S A \$2,000 WATCH, AND HOCKING IT FOR \$20, AND THEN
15 OFFERING TO GIVE US \$20. IT'S CRAZY.

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5 Q. WHY WOULD THEY PAY THE LICENSE FEE UP FRONT?

6 A. THERE IS A WIDE VARIETY OF REASONS AND HERE'S A LONG LIST.

7 SOME OF THESE I BELIEVE MR. ELLISON AND MS. CATZ
8 MENTIONED THIS MORNING. FIRST ONE IS VERY IMPORTANT. IF IT'S
9 UP FRONT, IT REALLY BALANCES AN IMPORTANT ISSUE IN THIS CASE.
10 IN THAT -- THE TIMING IN THIS CASE IS MAYBE THE MOST IMPORTANT
11 ISSUE.

12 ORACLE SPENT \$11 BILLION TO ACQUIRE PEOPLESOFT IN
13 JANUARY 2005, AND IT PAID IT UP FRONT. AND THEN IT TOOK ON THE
14 RISK OF EXECUTING ON THAT PLAN. AND IF IT DIDN'T GO WELL,
15 ORACLE COULDN'T GO BACK AND GET THAT \$11 BILLION BACK FROM
16 PEOPLESOFT SHAREHOLDERS. THAT'S JUST THE WAY IT WORKS. SO ALL
17 THE RISKS ON EXECUTING ON THAT PLAN WAS ON ORACLE.

18 SO FROM MY PERSPECTIVE, WE ARE GOING TO HAVE TO
19 BALANCE THAT. WE HAVE A TRANSACTION AT THAT POINT THAT
20 INCLUDES THE FAIR MARKET VALUE OF THE SOFTWARE THAT WAS
21 ACQUIRED THAT'S NOW IN THIS LAWSUIT. SO ORACLE PAID FOR THE
22 SOFTWARE AND WE SHOULD USE THAT TRANSACTION TO ALLOW FOR THIS
23 UPFRONT PAYMENT.

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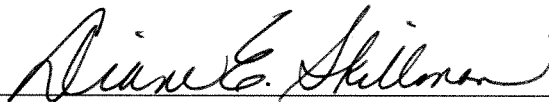
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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



DIANE E. SKILLMAN, CSR, RPR, FCRR

TUESDAY, NOVEMBER 9, 2010

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 6
)	
SAP AG, ET AL.,	)	PAGES 947 - 1187
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
_____)	TUESDAY, NOVEMBER 9, 2010

TRANSCRIPT OF PROCEEDINGS

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FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607
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TEXT REMOVED - NOT RELEVANT

21 Q. NOW, ALL OF THE TESTIMONY GIVEN HAS BEEN BASED ON THE
22 NEGOTIATED LICENSE FRAMEWORK; IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND YOU UNDERSTAND THAT SAP IS A PROPONENT OF A DIFFERENT
25 MEASURE OF DAMAGES IN THIS CASE, RIGHT?

1 A. THAT'S CORRECT.

2 Q. WHAT IS THAT MEASURE?

3 A. I BELIEVE IT'S SAP'S OPINION THAT THE DAMAGES SHOULD BE
4 MEASURED JUST BASED ON THE NUMBER OF CUSTOMERS THAT ORACLE
5 LOST -- ULTIMATELY LOST, AND THEN THERE'S -- THERE'S A
6 CALCULATION THEY DO OF, I THINK, TWO CUSTOMERS WHERE THEY CALL
7 THAT INFRINGERS' GAINS. SO IT'S LOST CUSTOMERS AND INFRINGERS'
8 GAINS.

9 Q. AND THAT'S LOOKING AT IT FROM THE PERSPECTIVE OF JANUARY 19,
10 2005 --

11 A. THAT'S CORRECT.

12 Q. -- WHEN THEY STARTED INFRINGE?

13 A. THAT'S CORRECT.

14 Q. AND THEN GOING FORWARD IN TIME, WHEN YOU DO A LOST
15 PROFITS/INFRINGERS' PROFITS CALCULATION?

16 A. BASICALLY, IT WOULD BE FROM JANUARY 2005 THROUGH THE POINT
17 IN TIME WHEN TOMORROWNOW CEASED OPERATIONS. AND THEN ALSO
18 LOOKING AT WHETHER THERE'S ALSO FUTURE IMPACT, FROM SAP'S
19 PERSPECTIVE, THEY DON'T LOOK AT FUTURE IMPACT. THEY STOP AT
20 OCTOBER 2008.

21 Q. DO YOU AGREE WITH THE METHODOLOGY OF MEASURING DAMAGES THAT
22 SAP IS ARGUING FOR?

23 A. FROM MY PERSPECTIVE, IN THESE CIRCUMSTANCES, THE -- THE ONLY
24 WAY TO VALUE THE SOFTWARE AND THE SOFTWARE MATERIALS THAT WERE
25 TAKEN, THAT PROPERTY OF ORACLE, IS THE FAIR MARKET VALUE OF THE

1 LICENSE IN THESE CIRCUMSTANCES.

2 Q. WHY IS THAT?

3 A. THERE'S -- ONE, IT GIVES YOU A CHANCE TO ACTUALLY VALUE THE
4 COPYRIGHTED PROPERTY. YOU CAN LOOK AT THE PROPERTY TAKEN AND
5 PUT IT INTO PERSPECTIVE OF WHAT -- WHAT YOU WOULD PAY FOR THAT
6 AND HOW ONE WOULD USE IT AT THE TIME OF THAT NEGOTIATION.

7 IT ALLOWS YOU TO VALUE THE IMPORTANCE OF THE SOFTWARE
8 THAT'S USED BY TOMORROWNOW IN THE SAFE PASSAGE PROGRAM. YOU
9 ACTUALLY CAN INSERT THAT SOFTWARE, AS THE MANAGEMENT OF SAP, DID
10 INTO THAT PROGRAM AND PUT A VALUE ON THAT AND DETERMINE THAT
11 VALUE WITH THE LICENSE.

12 IT ALSO ALLOWS YOU TO PUT A VALUE ON THE -- THE
13 BENEFITS TO SAP WHEN THEY HAVE THE SOFTWARE, CAN GO OUT AND
14 HAVE -- THEY'RE IMPROVED CUSTOMER RELATIONSHIPS AT SAP. EVEN
15 WHEN THEY DON'T CONVERT A CUSTOMER, THEY HAVE ADDITIONAL
16 RESOURCES THAT THEY DIDN'T HAVE WITHOUT HAVING THE LICENSE. YOU
17 CAN PUT A VALUE ON THAT.

18 AND IT CERTAINLY IS THE ONLY WAY -- IT'S THE ONLY WAY
19 IN THIS CASE TO PUT A VALUE ON THE IMPACT TO ORACLE OF THE
20 PEOPLESFT ACQUISITION. ORACLE PAID \$11 BILLION AND THERE'S NOT
21 ANY WAY THAT THE LOST PROFITS APPROACH PUTS A VALUE ON THE
22 IMPACT OF ORACLE OF SPENDING \$11 BILLION ON PEOPLESFT.

23 AND THEN IT ALLOWS ORACLE TO BE BASICALLY PAID FOR
24 THE VALUE OF ITS PROPERTY AT -- AT THE POINT IN TIME WHEN SAP
25 LAUNCHED THE PROGRAM AND -- AND HAD THE PROPERTY OF ORACLE TO

1 LAUNCH SAFE PASSAGE AND TO MAKE THE PROJECTIONS AND TO GO TO THE
2 MARKET WITH ITS PLANS TO IMPACT ORACLE.

3 Q. ALL RIGHT. AND I THINK THERE IS A SLIDE WITH SOME BULLET
4 POINTS ON THAT.

5 DOES THIS EXPLAIN WHY THE METHOD SAP IS ARGUING FOR
6 IS NOT ADEQUATE?

7 A. IT PROVIDES SOME OF THAT SUMMARY. AS I MENTIONED, ONE,
8 THERE'S NO WAY THAT THE LOST PROFITS AND THE -- I GUESS THEY
9 CALL THEM INFRINGERS' PROFITS, MEASURES THE FULL MARKET VALUE OF
10 THE COPYRIGHTED WORKS. AND, OBVIOUSLY, LOST PROFITS DOES NOT
11 MEASURE THE TOTAL IMPACT ON ORACLE, WHICH I MENTIONED.

12 IT ALSO DOES NOT CAPTURE ALL THE ACKNOWLEDGED
13 BENEFITS THAT WE'VE SEEN IN THE RECORDS OF THE INFRINGEMENT, SO
14 ALL THE PLANS AND -- AND MANAGEMENT FOCUS OF SAP'S MANAGEMENT
15 WITH SAFE PASSAGE. AND IT'S -- THE NEXT POINT, IT DOES NOT
16 MEASURE ANY VALUE BEYOND LOST CUSTOMER REVENUES AND PROFITS,
17 WHICH IS A BIG PROBLEM WITH THE APPROACH.

18 AND THIRD POINT, IT'S DEPENDENT ON SAP'S EXECUTION.
19 AND SO THEY'VE TAKEN THE PROPERTY SO IT -- IT'S DEPENDENT ON HOW
20 SAP'S EXECUTES THE PROPERTY. IT'S NOT THE VALUE OF THOSE
21 COPYRIGHTED WORKS. AND A LOT OF PROPERTY YOU SAW THEM ON MY
22 SCOPE SCHEDULE, IT DOESN'T VALUE THAT.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

12 Q. ALL RIGHT. LET ME ASK YOU THIS: DID YOU LOOK AT -- DID YOU
13 LOOK AT CALCULATING IT UNDER THE WRONG METHOD, THE LOST
14 PROFITS/INFRINGERS' PROFITS METHOD?

15 A. I DID A CALCULATION OF LOST PROFITS; THAT'S CORRECT.

16 Q. AND WHY DID YOU DO THOSE CALCULATIONS?

17 A. WELL, THERE WAS TWO REASONS. ONE, I WANTED TO KNOW WHAT THE
18 RESULT WAS IN TERMS OF WHAT WERE THE LOST PROFITS AND WHAT WERE
19 THE INFRINGERS' PROFITS. AND, SECONDLY, I MENTIONED A MOMENT
20 AGO, FOR SOME OTHER CAUSE OF ACTION, IT WAS THE ONLY WAY THAT
21 ONE COULD MEASURE. THAT WAS -- THE METHOD WAS LOST PROFITS.
22 AND SO I'VE DONE A CALCULATION OF LOST PROFITS IN THE INFRINGER
23 PROFITS.

24 Q. AND WHAT WERE THE RESULTS?

25 A. THE LOST PROFIT NUMBER IS \$120 MILLION. THAT'S THE LOST

1 PROFIT NUMBER. AND THEN THE INFRINGER (SIC) PROFIT'S NUMBER IS
2 \$288 MILLION. AND THAT REFLECTS NOT ALL THE CUSTOMERS THAT --
3 THAT WERE SAP CUSTOMERS AND ALSO TOMORROWNOW CUSTOMERS BUT A
4 SUBSET, SO I THINK IT'S ABOUT 60--SOME CUSTOMERS ARE IN THE
5 288 MILLION.

6 AND THEN THERE'S THREE CUSTOMERS, I THINK IN THAT
7 GROUP OF THE 288,000,000 WHERE THERE'S SOME ISSUES STILL THAT
8 SORT OF EXIST ABOUT THE ROLE OF TOMORROWNOW IN CONVERTING THOSE
9 CUSTOMERS TO SAP.

10 AND SO IF I LOOK AT THE IMPACT OF THOSE THREE
11 CUSTOMERS, I THINK THE NUMBER WOULD BE 236 MILLION. SO MY
12 INFRINGER PROFIT'S (SIC) NUMBERS, 288 MILLION, AND THEN RANGES
13 DOWN TO 236 MILLION DEPENDING ON THESE THREE CUSTOMERS.

14 AND SO THAT'S WHERE I'VE COME OUT WITH THOSE
15 CALCULATIONS.

16 Q. SO IF I COMBINE THE 120 MILLION IN LOST PROFITS WITH THE 288
17 MILLION IN INFRINGER'S PROFITS, WHAT DO WE GET?

18 A. I THINK IT'S 408,000,408.

19 Q. BUT DOES THAT FULLY COMPENSATE ORACLE IN THIS CASE?

20 A. NO, IT WOULD NOT. IT WOULD NOT COMPENSATE FOR THE VALUE OF
21 INTELLECTUAL PROPERTY.

22 Q. WHAT COMPENSATES ORACLE FOR THE VALUE OF WHAT SAP TOOK?

23 A. THE ONLY WAY TO DO IT IS THE FAIR MARKET VALUE OF THE
24 LICENSE APPROACH AT THE 1.5 BILLION.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

25 Q. OKAY. SO THE TWO ASPECTS OF THE FIRST METHOD ARE ORACLE'S

1 LOST SUPPORT PROFITS, RIGHT?

2 A. ON LOST PROFITS.

3 Q. YES.

4 A. YEAH, THAT WAS ONE PIECE.

TEXT REMOVED - NOT RELEVANT

16 BY MR. MITTELSTAEDT:

17 Q. OKAY. SO ONE ASPECT OF IT IS ORACLE'S LOST SUPPORT PROFITS,
18 RIGHT?

19 A. THAT'S ONE CALCULATION.

20 Q. AND THOSE ARE THE ORACLE CUSTOMERS WHO LEFT ORACLE BECAUSE
21 OF TOMORROWNOW AND OBTAINED MAINTENANCE OR SUPPORT SERVICES FROM
22 TOMORROWNOW?

23 A. THAT'S CORRECT.

24 Q. AND THE OTHER PART OF THIS CALCULATION ARE THE PROFITS THAT
25 SAP GAINED FROM CUSTOMERS WHO LEFT ORACLE AND BOUGHT SOFTWARE

1 FROM SAP AS A RESULT OF TOMORROWNOW'S INFRINGEMENT, CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND WE CALL THOSE -- LET'S JUST CALL THOSE SOFTWARE PROFITS
4 OF SAP. AND THEN I'LL PUT "MEYER," "M," AND "CLARKE,"
5 MR. CLARKE BEING SAP'S EXPERT. AND LET'S FOCUS ON THE --
6 YOU'D --

7 YOU CALCULATED SUPPORT PROFITS FOR TWO TIME PERIODS,
8 THE TOMORROWNOW TIME PERIOD AND THEN A LONGER TIME OUT TO 2015;
9 IS THAT CORRECT?

10 A. RIGHT, TO REFLECT THE ONGOING IMPACT.

11 Q. AND THE -- LET'S TAKE YOUR NUMBER FOR THE TOMORROWNOW
12 PERIOD. THAT NUMBER WAS WHAT, IF YOU RECALL?

13 A. I BELIEVE FOR THE PLAINTIFF IN THE ACTION RIGHT NOW,
14 \$36 MILLION.

15 Q. YOUR NUMBER?

16 A. RIGHT. 36 MILLION THROUGH TOMORROWNOW PERIOD, RIGHT?

17 Q. OKAY. WASN'T IT ACTUALLY ABOUT 82 MILLION?

18 A. NO. I THINK ALL WE'RE TALKING ABOUT NOW IS OIC IS THE ONLY
19 PLAINTIFF LEFT IN THE CASE, SO IT'S 36.

20 Q. AND MR. CLARKE CAME UP WITH ABOUT THE SAME NUMBER, RIGHT?

21 A. I DON'T THINK THAT'S CORRECT. I THINK HIS COMPARABLE
22 NUMBER -- I HAVE MY WORK PAPERS -- IS, LIKE, 19 MILLION.

23 Q. OKAY. OKAY. YOU SAY 19 MILLION, I'M GOING TO PUT ABOUT
24 32 MILLION.

25 A. THAT WOULD NOT BE CORRECT, THOUGH.

1 Q. OKAY.

2 A. SO HIS NUMBER -- IF WE'RE TALKING ABOUT THE PLAINTIFF, AS I
3 UNDERSTAND IT THAT'S STILL IN THE LAWSUIT, HIS NUMBER IS 19
4 MILLION, AND MY NUMBER'S 36 MILLION THROUGH OCTOBER 2008 AND
5 121 MILLION THROUGH 2015.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

5 OKAY. LET'S COME DOWN TO THE SOFTWARE PROFITS OF SAP
6 AS A RESULT OF THE INFRINGEMENT. WHAT -- WHAT NUMBER DO YOU
7 COME UP WITH THERE?
8 A. I MENTIONED TWO NUMBERS TODAY. I BELIEVE I MENTIONED
9 288 MILLION. AND I MENTIONED, I THINK, 236.

TEXT REMOVED - NOT RELEVANT

1 BY MR. MITTELSTAEDT:

2 Q. OKAY.

3 SO YOUR TOTAL, YOUR TOTAL FOR THOSE TWO CATEGORIES
4 RANGES FROM WHAT, A LOW OF ABOUT IT 272 TO A HIGH OF ABOUT
5 400 MILLION; IS THAT RIGHT?

6 A. IT WAS 400 OR 408, BUT WHATEVER. IT'S CLOSE ENOUGH.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

13 Q. SIR, YOU ACTUALLY DID THAT CALCULATION TWO WAYS. YOU DID
14 ONE WAY THROUGH THE END OF TOMORROWNOW AND THEN A SEPARATE
15 CALCULATION FOR OUT THROUGH 2015, CORRECT?

16 A. IT'S THE SAME CALCULATION. YOU JUST ADD THE ADDITIONAL
17 YEARS IN FOR THE BROKEN SERVICE.

18 Q. YOU DID IT TWO WAYS. YOU DID IT DURING THE TOMORROWNOW
19 PERIOD AND THEN YOU EXTENDED THAT OUT UNTIL 2015, CORRECT?

20 A. I DON'T UNDERSTAND YOUR QUESTION. I HAVE TWO CALCULATIONS
21 AND I'VE ALREADY DESCRIBED THAT.

22 Q. ONE CALCULATION GOES FOR THE TOMORROWNOW TIME PERIOD,
23 RIGHT?

24 A. ONE CALCULATION HAS A SUBTOTAL BASICALLY OF THE
25 TOMORROWNOW TIME FRAME AND ONE GOES FROM OCTOBER 2008 ON

1 THROUGH, I THINK IT'S MAY OF 2015.

2 Q. WHETHER YOU CALL IT A SUBTOTAL OR A SEPARATE WAY, YOUR
3 36 MILLION IS FOR THE TOMORROWNOW TIME PERIOD, THOSE THREE OR
4 SO YEARS, CORRECT?

5 A. I WOULD AGREE WITH THAT.

6 Q. THANK YOU.

7 AND MR. CLARKE USED THAT SAME TIME PERIOD, CORRECT?

8 A. WELL, MR. CLARKE'S ENTIRE CALCULATION IS FOR THAT TIME
9 FRAME. I AGREE WITH THAT.

10 Q. MR. CLARKE USED THAT SAME TIME PERIOD, CORRECT?

11 A. I DON'T FOLLOW YOUR QUESTION.

12 HE CUT IT OFF IN OCTOBER 2008.

13 Q. AS YOU DID IN THIS FIRST CALCULATION, CORRECT?

14 A. IN ONE OF THE CALCULATIONS AS PART OF MY PRESENTATION, I
15 SHOW A CUTTING OFF AT THAT POINT IN TIME.

16 Q. OKAY.

17 NOW LET'S GO TO THE SOFTWARE PROFITS OF SAP. THAT'S
18 ALSO REFERRED TO AS INFRINGERS' PROFITS, CORRECT?

19 A. THAT'S RIGHT. THAT'S THE PROFITS THAT THE INFRINGERS HAD
20 MADE FROM USING, IN THIS CASE, THE SOFTWARE OF TOMORROWNOW OR
21 OF PEOPLESOFT.

22 Q. AND HOW MANY CUSTOMERS IS YOUR 288 MILLION BASED ON?

23 A. I BELIEVE IT'S ABOUT 66. LET ME CHECK THAT FOR YOU.

24 I THINK THERE WERE 86 TOTAL, AND I EXCLUDED 20, SO
25 THERE'S 66 CUSTOMERS IN THE INFRINGERS' PROFIT CALCULATION.

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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, TUESDAY, NOVEMBER 9, 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.



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



DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 10, 2010

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 7
)	
SAP AG, ET AL.,	)	PAGES 1188 - 1420
)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	FRIDAY, NOVEMBER 12, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN 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

TEXT REMOVED - NOT RELEVANT

11 Q. OKAY. LET'S GO TO THE -- FINALLY, TO THE OTHER PART OF THE
12 CALCULATION, THE SOFTWARE COMPANIES, THE -- THE CUSTOMERS WHO
13 LEFT ORACLE FOR SAP TO BUY SOFTWARE FROM SAP. YOU EXCLUDED FROM
14 YOUR LOST PROFITS OR INFRINGERS'-PROFITS ANALYSIS A NUMBER OF
15 CUSTOMERS THERE, DIDN'T YOU?

16 A. WE'RE TALKING NOW THE -- THE GAINS FROM OTHER SAP SALES.

17 Q. YES.

18 A. YES, I HAD SOME EXCLUSIONS.

19 Q. AND YOU STARTED WITH ABOUT 86 CUSTOMERS, AND YOU REMOVED
20 ABOUT 20 CUSTOMERS.

21 A. YES, I'M AT 66.

22 Q. OKAY. AND THAT'S BECAUSE YOU CONCLUDED THAT ORACLE'S LOSS
23 OF THOSE CUSTOMERS TO SAP COULD NOT BE ATTRIBUTED TO
24 TOMORROWNOW'S INFRINGEMENT, CORRECT?

25 A. IN A GENERAL SENSE.

TEXT REMOVED - NOT RELEVANT

19 Q. OKAY.

20 NOW, AT THE END OF YOUR ANALYSIS OF THE INFRINGERS'
21 PROFITS, CUSTOMERS WHO LEFT ORACLE FOR SAP TO BUY SOFTWARE, YOUR
22 OPINION WAS THAT YOUR NUMBER WAS ABOUT \$288 MILLION IN PROFITS,
23 CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOUR OPINION WAS THAT THAT \$288 MILLION WAS A REASONABLE

1 CALCULATION OF THE VALUE THAT SAP RECEIVED FROM THE ALLEGED
2 INFRINGEMENT, CORRECT?

3 A. WHAT THAT AMOUNT IS, IT'S --

4 Q. SIR --

5 A. TOMORROWNOW WAS ONE FACTOR IN SAP MAKING THE \$288 MILLION.
6 THAT'S WHAT IT IS.

TEXT REMOVED - NOT RELEVANT

18 Q. QUESTION -- THIS IS FROM YOUR DEPOSITION, SIR, MAY 13 OF
19 THIS YEAR.

20 "OKAY. SO THE \$288 MILLION OF INFRINGERS'
21 PROFITS THAT YOU CALCULATED, IS IT YOUR POSITION THAT
22 BUT FOR THE ACTIVITIES OF TOMORROWNOW, SAP WOULD NOT
23 HAVE RECEIVED ANY OF THOSE PROFITS?

24 "A. IT IS MY POSITION THAT THE \$288 MILLION
25 IS A CALCULATION OF BENEFITS THAT SAP RECEIVED

1 FROM THE ALLEGED INFRINGEMENT. AND FROM MY
2 PERSPECTIVE, I HAVE LOOKED AT THOSE CUSTOMERS
3 AND DETERMINED THAT THE 288 MILLION IS A
4 REASONABLE CALCULATION OF THAT VALUE."

5 NOW, SIR --

6 A. I'LL STAND BY THAT TESTIMONY. I'LL STAND BY THAT. THAT'S
7 EXACTLY WHAT I JUST SAID.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

12 Q. AND HOW ABOUT THE INFRINGERS' PROFITS?

13 A. THAT NUMBER WAS 288 MILLION, WAS MY UPPER BOUND. AND THEN
14 THERE'S THREE CUSTOMERS I MENTIONED TO MR. MITTELSTAEDT THAT
15 TAKES IT DOWN TO 236 ON THE LOWER END OF THAT.

TEXT REMOVED - NOT RELEVANT

CERTIFICATE OF REPORTER

1
2
3
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, FRIDAY, NOVEMBER 12, 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 REPORTERS' CERTIFICATION OF
14 SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL
15 FROM THE COURT FILE.

16 *Raynee H. Mercado*
17 _____

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

19 *Diane E. Skillman*
20 _____

21 DIANE E. SKILLMAN, CSR, RPR, FCRR

22
23 SATURDAY, NOVEMBER 13, 2010
24
25

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 9
)	
SAP AG, ET AL.,	)	PAGES 1512 - 1695
)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	TUESDAY, NOVEMBER 16, 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
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BY: DAVID BOIES,
STEVEN C. HOLTZMAN, ATTORNEYS AT LAW

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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

TEXT REMOVED - NOT RELEVANT

20 Q. MR. CLARKE, LET ME JUST STOP YOU FOR A MINUTE.

21 THE END DATE FOR THIS CALCULATION IS, I AM NOT SURE

22 IF YOU SAID IT, IT'S THE SAME END DATE THAT MR. MEYER USES?

23 A. ACTUALLY, I THINK THIS IS MORE LIKE 12/31/08. I AM PRETTY

24 SURE THAT'S THE DATE WE USED.

25 Q. IN ANY EVENT, THE TWO OF YOU, YOU AND MR. MEYER, HAVE

1 CALCULATED THE INFRINGERS' PROFITS FOR THE SAME TIME PERIOD?

2 A. YES. WE BOTH USE THE SAME TIME PERIOD. IT'S JUST THREE
3 MONTHS LONGER, THAT'S ALL.

TEXT REMOVED - NOT RELEVANT

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, TUESDAY, NOVEMBER 16, 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.



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



DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 17, 2010

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 10
)	
SAP AG, ET AL.,	)	PAGES 1696 - 1879
)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	THURSDAY, NOVEMBER 18, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BINGHAM MCCUTCHEM 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
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(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 Q. WHY DIDN'T YOU USE ALL 86 IN THE CALCULATION OF THE
2 PROFITS THAT SAP OWES ORACLE?

3 A. BECAUSE IF I COULD FIND REASONS FOR THEM GOING TO SAP THAT
4 WERE NOT RELATED TO THE INFRINGEMENT, FOR EXAMPLE, THE -- MY
5 POSTER CHILD, MY FIRST ONE WAS THE ENGELHARD ACQUISITION BY
6 BASF. CLEARLY THAT CHANGE DIDN'T OCCUR AS A RESULT OF THE
7 INFRINGEMENT. THEY WENT TO SAP BECAUSE THEIR NEW OWNER SAID
8 YOU HAVE TO GO TO SAP, THAT'S WHAT WE RUN THE ENTIRE COMPANY
9 ON.

10 SO, FOR THE WHOLE HOST OF REASONS THAT WE TALKED
11 EARLIER, ABOUT EARLIER, THERE WERE, THERE WERE STATEMENTS MADE
12 AND THERE WERE CLEAR RATIONALES AND REASONS FOR WHY THESE
13 COMPANIES WENT TO SAP THAT WERE NOT RELATED TO THE
14 INFRINGEMENT.

15 SO THAT'S WHY I EXCLUDED THEM. THEY WOULD HAVE GONE
16 TO THEIR -- TO SAP ANYWAY ABSENT THE INFRINGEMENT.

17 Q. YOU WERE ASKED A LOT OF QUESTIONS DAY BEFORE YESTERDAY
18 ABOUT WHY YOU USED THE 50 PERCENT PROFIT MARGIN IN CALCULATING
19 THIS.

20 DO YOU REMEMBER THAT?

21 A. I DO.

22 Q. WHAT FIGURE DID MR. MEYER USE IN HIS SIMILAR CALCULATION?

23 A. 50 PERCENT.

24 Q. AND WHAT TIME PERIOD DID HE USE AS THE CUTOFF?

25 A. FOR INFRINGERS' PROFITS NOW?

1 Q. YES.

2 A. SAME AS ME, 12/31/08.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

5 Q. DO YOU HAVE ANYTHING IN THAT BINDER OTHER THAN THE LIST OF
6 86 CUSTOMERS GIVEN TO YOU BY JONES DAY OR PREPARED -- PREPARED
7 BY DEFENDANT AND GIVEN TO YOU BY EITHER JONES DAY OR SOMEBODY
8 THAT LISTED THOSE 86 CUSTOMERS?

9 A. SOMETHING IN ADDITION TO THE LIST?

10 Q. YES.

11 A. I HAD EXTRACTS FROM THEIR ACCOUNTING SYSTEMS THAT RELATED
12 TO THE 86. SO THAT WASN'T JUST A LIST. THERE WAS ALL THE
13 REVENUES FOR THE DIFFERENT LINES OF BUSINESS OVER THE WHOLE
14 PERIOD THAT WE ARE REFERRING TO.

TEXT REMOVED - NOT RELEVANT

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, THURSDAY, NOVEMBER 18, 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.

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



DIANE E. SKILLMAN, CSR, RPR, FCRR

FRIDAY, NOVEMBER 19, 2010

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

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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

TEXT REMOVED - NOT RELEVANT

19 NOW, WITH RESPECT TO THE 86, THE LETTER THAT SETS
20 FORTH HOW THE 86 WERE SELECTED IS IN EVIDENCE. THAT CAME IN AS
21 EVIDENCE WITHOUT OBJECTION. IT IS SOMETHING THAT WAS DONE BASED
22 ON THE INFORMATION PROVIDED BY SAP COUNSEL. THE LETTER STATES
23 THE ISSUES, AND WE ARE REALLY JUST REFERRING TO THE ISSUES THAT
24 ARE STATED IN THAT LETTER BY JONES DAY THAT IS IN EVIDENCE.

25 THERE WAS NEVER A STIPULATION THAT THOSE 86 CUSTOMERS

1 REPRESENTED THE UNIVERSE OF DAMAGES. THE PROBLEM IS THAT WHEN
2 YOU USE EITHER LOST PROFITS OR INFRINGER'S PROFITS OR RUNNING
3 ROYALTY, YOU'RE DEALING WITH A UNIVERSE OF CUSTOMERS THAT IS, WE
4 ALL KNOW, INCOMPLETE. AND THAT'S THE ONLY POINT WE'RE MAKING.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

10 THE COURT: YOU CAN ATTRIBUTE IT TO SAP, NOT TO THE
11 LAWYERS.

TEXT REMOVED - NOT RELEVANT

19 WITH REGARD TO THE CHARACTERIZATION OF COPYRIGHT
20 INFRINGEMENT AS THEFT OR STEALING, I INDICATED TO YOU ALL FOR
21 OPENINGS THAT YOU COULDN'T USE IT THROUGHOUT THE COURSE OF THE
22 TRIAL. YOU'VE BEEN VERY GOOD. YOU HAVEN'T -- NONE OF THE
23 WITNESSES HAVE USED THAT LANGUAGE. IN MY VIEW, THAT LANGUAGE IS
24 INFLAMMATORY, UNNECESSARY.

25 THIS IS A COPYRIGHT CASE. "COPYRIGHT INFRINGEMENT"

1 IS A TERM OF ART THAT IS WHAT HAS BEEN STIPULATED TO. AND NO,
2 YOU MAY NOT USE THE LANGUAGE -- WORDS SUCH AS "THEFT" OR
3 "STEALING."

4 THROUGHOUT THE COURSE OF THE TRIAL, WITNESSES HAVE
5 USED LANGUAGE SUCH AS "TAKING OUR SOFTWARE," AND, OBVIOUSLY, YOU
6 CAN CONTINUE TO USE THAT. BUT KEEP IN MIND THE BASIS FOR MY
7 RULING WAS TWO-FOLD, NOT JUST THAT I DID NOT WANT THE JURY TO BE
8 MISLED INTO THINKING THAT THERE WERE ANY KIND OF CRIMINAL --
9 CRIMINAL UNDERTONES HERE. BUT ADDITIONALLY, IT WAS ON THE BASIS
10 OF MY DETERMINATION THAT THE LANGUAGE IS JUST INFLAMMATORY.
11 IT'S NOT NECESSARY.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

7 NOW, IF WE GO TO 83, REMEMBER MR. PHILLIPS
8 TESTIFYING?

9 (DEMONSTRATIVE PUBLISHED TO JURY.)

10 MR. BOIES: TESTIFIED IF HE PAYS SOMEBODY \$11 BILLION
11 AND HIS COMPETITOR WANTS IT, HE EXPECTS THEM TO PAY BILLIONS OF
12 DOLLARS FOR IT AS WELL. AND WITH SIEBEL THE SAME THING.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

13 NOW, LET ME SPEND A MOMENT ON -- ON LOST PROFITS
14 AND -- AND WHY LOST PROFITS DOESN'T INCLUDE ALL THAT NEEDS TO BE
15 INCLUDED IN TERMS OF THE LOSS. AND WHY WE'RE SEEKING FAIR
16 MARKET VALUE LICENSE AS OPPOSED TO LOST PROFITS. I WANT YOU TO
17 UNDERSTAND.

18 102?

19 (DEMONSTRATIVE PUBLISHED TO JURY.)

20 MR. BOIES: FIRST, LOST PROFITS DOES NOT CONSIDER THE
21 RISK ASSOCIATED WITH ORACLE'S SIGNIFICANT INVESTMENTS IN
22 PEOPLESOFT. SECOND, LOST PROFITS DOES NOT APPROPRIATELY MEASURE
23 THE VALUE OF THE IP TAKEN, BASED ON THE EXPECTATIONS OF THE
24 PARTY AT THE TIME, WHICH IS THE LEGAL STANDARD. THIRD, LOST
25 PROFITS ARE INCONSISTENT WITH SAP'S INTENT TO DISRUPT ORACLE'S

1 BUSINESS RELATIONSHIPS. THAT WAS PART OF THE PURPOSE OF DOING
2 IT. AND FOURTH, IT DOES NOT FULLY COMPENSATE ORACLE BASED ON --
3 JUST LOOKING AT THE MAINTENANCE REVENUE.

4 NOW, I ALSO WANT TO TALK JUST FOR A MOMENT ABOUT
5 SOMETHING CALLED INFRINGER'S PROFITS, WHICH YOU MAY OR MAY NOT
6 GET TO DEPENDING ON HOW YOU ANSWER SOME OF THE OTHER QUESTIONS
7 ON THE JURY -- BUT I DO WANT TO TALK TO YOU ABOUT INFRINGER'S
8 PROFITS.

9 FIRST, INFRINGER PROFITS ARE THE PROFITS THAT THEY
10 MAKE. AND IF YOU GO TO 287 --

11 (DEMONSTRATIVE PUBLISHED TO JURY.)

12 MR. BOIES: -- MR. MEYER CAME UP WITH AN ESTIMATE OF
13 \$288 MILLION FOR INFRINGER PROFITS. AND HE SAID THAT'S
14 INCOMPLETE. HE SAID IT'S MORE THAN THAT, BUT I CAN'T TELL YOU
15 HOW MUCH MORE THAN THAT 'CAUSE I DON'T HAVE THE DATA. AND ONE
16 OF THE PROBLEMS WITH THE INFRINGER'S PROFITS IS THAT THE DATA IS
17 NOT ALL AVAILABLE.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

19 AND IF YOU THINK ABOUT IT, IN COMMON SENSE TERMS, IF
20 SOMEBODY GOES IN AND STEALS A GAME FROM BEST BUY, AND LET'S SAY
21 BEST BUY HAS A LOT OF THOSE GAMES, SO THEY DON'T REALLY LOSE
22 ANY CUSTOMERS OVER IT BECAUSE THEY HAVE EXCESS INVENTORY, AND
23 LET'S SAY THE PERSON NEVER USES THE GAME, BESIDES PARENTS WON'T
24 LET THEM USE THE GAME, WHATEVER REASON, DOESN'T USE THE GAME,
25 DOES THAT MEAN HE DOESN'T OWE ANYTHING FOR THAT GAME THAT WAS

1 TAKEN?

2 YOU CAN'T HAVE THAT KIND OF RULE ABOUT THINGS THAT
3 PEOPLE ESSENTIALLY TAKE. YOU DON'T HAVE A RIGHT TO TAKE AND
4 THEN GO BACK IN AND SAY, WELL, WE DIDN'T MAKE AS MUCH AS WE
5 THOUGHT WE GAINED, YOU DIDN'T LOSE AS MUCH AS YOU THOUGHT YOU
6 WOULD LOSE, THEREFORE, WE DON'T HAVE TO PAY YOU WHAT IT WOULD
7 HAVE COST US TO LICENSE THAT SOFTWARE AT THE TIME.

8 NOT ONLY IS THAT NOT FAIR, BUT THAT SENDS UP EVERY
9 WRONG INCENTIVE FOR HOW WE WANT PEOPLE, AND PARTICULARLY LARGE
10 CORPORATIONS TO BEHAVE AND CONDUCT THEIR BUSINESSES. IT IS
11 ALSO SOMETHING THAT UNDERMINES THE VERY FOUNDATIONS OF THE
12 SOFTWARE BUSINESS.

TEXT REMOVED - NOT RELEVANT

TEXT REMOVED - NOT RELEVANT

5 THE COURT: ALL RIGHT. "WE HAVE A QUESTION FROM THE
6 JURY, AND IT READS AS FOLLOWS: WE WANT TO HAVE A BREAKDOWN OR
7 CHART OF HOW MR. MEYER AND MR. CLARKE CALCULATED ALL OF THEIR
8 FAIR MARKET VALUE OR LOST PROFIT AMOUNTS."

TEXT REMOVED - NOT RELEVANT

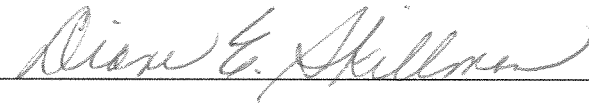
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2
3 CERTIFICATE OF REPORTER

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

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20 

21 DIANE E. SKILLMAN, CSR, RPR, FCRR

22
23 TUESDAY, NOVEMBER 23, 2010
24
25

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

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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258
DIANE E. SKILLMAN, CSR NO. 4909

TEXT REMOVED - NOT RELEVANT

8 THE COURT: OKAY. ALL RIGHT.

9 COUNSEL? I SEE THAT YOU WERE ABLE TO COME UP WITH A
10 DEMONSTRATIVE THAT YOU HAVE JOINTLY PARTICIPATED IN.

11 MR. LANIER: YES, YOUR HONOR.

12 THE COURT: OKAY. AND IT SEEMS FINE -- IT SEEMS FINE
13 TO ME. IS THERE ANY REASON WHY WE CAN'T JUST GIVE IT TO THE
14 JURY? WE JUST HAVE TO, FOR THE RECORD, MAKE SURE THAT IT'S
15 MARKED IN SOME FASHION.

16 MR. LANIER: AND WE JUST -- WE DON'T OBJECT TO GIVING
17 IT DIRECTLY TO THE JURY IN RESPONSE TO THEIR QUESTION, AND WE'RE
18 HAPPY TO CALL IT JOINT TRIAL EXHIBIT --

19 THE COURT: JOINT TRIAL EXHIBIT 1. HOW'S THAT?

20 (OFF-THE-RECORD DISCUSSION.)

21 MR. LANIER: WE HAVE A JTX1. I THINK WE'RE UP TO
22 JTX6, SO THIS WOULD BE 7?

23 MR. HOLTZMAN: I THINK THIS IS 6.

24 MR. HOWARD: 6.

25 MR. LANIER: JOINT TRIAL EXHIBIT 6.

1 THE COURT: JOINT TRIAL EXHIBIT 6.

2 MAYBE YOU CAN JUST PUT A LITTLE STICKER ON IT. I
3 DON'T SEE THAT IT NEEDS ANY ELABORATION.

4 NICHOLE WILL JUST TAKE IT TO THEM, AND THEY CAN
5 CONTINUE WITH THEIR WORK.

6 MR. LANIER: WE AGREE, YOUR HONOR.

7 THE COURT: OKAY.

8 MR. HOWARD: VERY WELL.

9 THE COURT: OKAY. GOOD.

10 MR. LANIER: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT.

TEXT REMOVED - NOT RELEVANT

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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