

# EXHIBIT 1

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 - 124
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	WEDNESDAY, SEPTEMBER 30, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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FOR DEFENDANTS:

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

TEXT REMOVED - NOT RELEVANT TO MOTION

A P P E A R A N C E S (CONT'D.)

FOR DEFENDANTS:

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3 ALL RIGHT. TURNING TO THE SECOND ONE -- WE NEED TO  
 4 MOVE THINGS ALONG, 'CAUSE WE HAVE A LOT OF THINGS TO GET  
 5 THROUGH -- AND THAT IS THE LOST PROFITS.  
 6 MR. McDONELL: YES. ON NO. 2, DEFENDANT'S MOTION IN  
 7 LIMINE NO. 2, YOUR HONOR, WE HAVE A SIMILAR PROBLEM. THE -- THE  
 8 BACKGROUND, AGAIN, IS JUDGE LAPORTE'S ORDER THAT WAS CRYSTAL  
 9 CLEAR IN EXCLUDING EVIDENCE OF CROSS-SELL AND UP-SELL  
 10 OPPORTUNITIES, AND THOSE ARE BASICALLY SALES OF SOFTWARE  
 11 LICENSES, AS WELL AS ANY SALES TO CUSTOMERS THAT HAD NEVER  
 12 BECOME CUSTOMERS OF TOMORROWNOW.  
 13 THEY APPEALED THAT ORDER TO YOUR HONOR AND ASKED THAT  
 14 THEIR WITNESSES BE ABLE TO TALK ABOUT THAT EXCLUDED EVIDENCE AS  
 15 A WAY OF EXPLAINING WHY THEIR OTHER DAMAGES CLAIMS MAY BE HIGH  
 16 AND THE LOST PROFITS CLAIM MAY BE LOW, AND THEY ALSO ASKED YOUR  
 17 HONOR SPECIFICALLY THAT THEIR WITNESSES BE ALLOWED TO TESTIFY TO  
 18 ALL THE IMPACTS THEY PERCEIVED FROM DEFENDANTS' UNLAWFUL  
 19 ACTIVITIES.  
 20 AND I CITE THERE TO THEIR APPLICATION TO YOU OR THEIR  
 21 OBJECTION TO YOU AT ECF499, PAGE 16.  
 22 WE OBJECTED, AND WE SAID NO, THIS IS JUST KIND OF A  
 23 ROUNDABOUT WAY OF GETTING VALUE OUT OF THE EVIDENCE THAT'S  
 24 ACTUALLY BEEN EXCLUDED TO PROP UP YOUR OTHER DAMAGES CLAIMS OR  
 25 TO OUTRIGHT COME OUT AND TALK ABOUT EXACTLY WHAT'S BEEN

1 PRECLUDED. AND YOUR HONOR'S ORDER WAS VERY CLEAR. NO, THAT  
 2 WON'T BE ALLOWED, EITHER DIRECTLY OR INDIRECTLY THROUGH THE BACK  
 3 DOOR. SO ISSUE SOLVED, OR SO WE THOUGHT, UNTIL RECENTLY AGAIN  
 4 IN THE -- IN THE -- FOR ONE EXAMPLE IN THE DAMAGES JURY  
 5 INSTRUCTIONS -- OR IN THEIR JURY INSTRUCTIONS, THEY NOW HAVE AN  
 6 INSTRUCTION SEEKING TO RECOVER FOR LOSSES TO PROSPECTIVE  
 7 CUSTOMERS UNDER THEIR INTERFERENCE CLAIM.  
 8 WELL, PROSPECTIVE CUSTOMERS WOULD BE THESE CUSTOMERS  
 9 THAT HAD NOT BEEN ORACLE CUSTOMERS AND BECAME -- WERE NEW  
 10 CUSTOMERS, EXACTLY WHAT WAS EXCLUDED BY JUDGE LAPORTE'S ORDER  
 11 THAT THERE WON'T BE EVIDENCE OR ARGUMENT OF LOST SALES TO THESE  
 12 COMPANIES OTHER THAN THE 358 THAT ARE AT ISSUE HERE.  
 13 AND THEN MORE SUBTLY THROUGH THE BACK DOOR, THEIR  
 14 DAMAGES EXPERT USES LOST CROSS-SELL AND UP-SELL OPPORTUNITIES AS  
 15 A FAIRLY IMPORTANT CENTERPIECE OF HIS FAIR-VALUE-OF-USE ANALYSIS  
 16 WHERE HE BASICALLY SAYS -- AND THIS GETS US BACK TO GOOD WILL A  
 17 LITTLE BIT -- THAT GOOD WILL IS LARGELY THESE CROSS-SELL AND  
 18 UP-SELL OPPORTUNITIES. SO ORACLE WAS GOING TO LOSE THAT VALUE,  
 19 TOO.  
 20 WE AGAIN THINK THAT'S JUST THE BACK DOOR AND HAS THE  
 21 EFFECT OF EVISCERATING THE SENSE OF JUDGE LAPORTE'S ORDER.  
 22 I WOULD SUBMIT WITH THAT, YOUR HONOR.  
 23 MR. PICKETT: THIS IS NOT ABOUT LOST PROFITS, YOUR  
 24 HONOR. IT IS ABOUT THE FAIR MARKET VALUE OF USE AND WHETHER OUR  
 25 EXPERT CAN -- CAN LOOK AT THE TOTAL VALUE ORACLE PAID FOR

1 PEOPLESOFT, AND SIEBEL BY ANALOGY -- LOOK AT THAT TOTAL VALUE  
 2 AND VALUE EVERYTHING THAT'S RELEVANT TO THE SOFTWARE THAT WAS  
 3 STOLEN.  
 4 IT'S NOT ABOUT -- IT'S NOT ABOUT LOST PROFITS. IT'S  
 5 NOT ABOUT THE -- IT IS ABOUT THE FAIR MARKET VALUE OF USE. WHAT  
 6 THEY'RE TRYING TO DO IS EXPAND THIS PRIOR ORDER, WHEN AT THE  
 7 VERY TIME THEY MADE THIS -- THEY SOUGHT THIS ORDER, THEY SAID,  
 8 QUOTE, IT DOES NOT EXTEND TO ORACLE'S HYPOTHETICAL LICENSE  
 9 THEORY, CLOSED QUOTE.  
 10 NOW THEY'RE TRYING TO TAKE BACK WHAT THEY SAID TO  
 11 JUDGE LAPORTE AND SAY, IT DOES EXTEND TO ORACLE'S HYPOTHETICAL  
 12 LICENSE THEORY. THAT'S EXACTLY WHAT THIS MOTION IS ABOUT.  
 13 THE COURT: CAN I JUST ASK -- CAN I JUST ASK, WAS THE  
 14 ISSUE RAISED AT THE TIME THAT THIS PARTICULAR EVIDENCE AS TO  
 15 LOST PROFITS WAS RELEVANT TO THE HYPOTHETICAL LICENSE ANALYSIS?  
 16 MR. PICKETT: NO, BECAUSE THEY SAID IT HAD NOTHING TO  
 17 DO WITH THE HYPOTHETICAL FAIR MARKET VALUE APPROACH.  
 18 THE COURT: HAD THE EXPERT REPORTS ALREADY BEEN  
 19 PREPARED --  
 20 MR. PICKETT: NO.  
 21 THE COURT: -- YOUR EXPERT? NO?  
 22 MR. PICKETT: NO, THOSE WERE PREPARED MONTHS LATER.  
 23 THEY ARE -- STARTED LAST NOVEMBER, BUT THAT'S AN ISSUE THAT BOTH  
 24 EXPERTS HAVE LOOKED AT, AND WE'VE DONE LOTS OF DISCOVERY OVER.  
 25 SO WHAT THIS IS TRYING TO DO IS CUT A SIGNIFICANT --

1 OF HUNDREDS OF MILLIONS OF DOLLARS OUT OF OUR EXPERT'S REPORT ON  
 2 THE BASIS OF A BRIEF OF A FEW PAGES. IT HASN'T BEEN FULLY  
 3 BRIEFED, AND IT INAPPROPRIATELY TRIES TO DO WHAT THEY EXACTLY  
 4 SAID THEY WOULD NOT DO.  
 5 THE LOST PROFITS MEASURE, AS YOUR HONOR KNOWS, IS  
 6 COMPLETELY SEPARATE FROM THE FAIR MARKET VALUE OF USE, AND  
 7 THEY'VE BEEN AFTER THAT FAIR MARKET VALUE OF USE -- THEY TOLD  
 8 YOUR HONOR BACK IN -- A YEAR AND A HALF AGO, THEY SAID THERE'S  
 9 SUCH A STRONG RULE, WE SHOULD GET A EARLY OPPORTUNITY TO FILE A  
 10 SUMMARY JUDGMENT ON THAT.  
 11 AND THEY DID, AND YOUR HONOR PROPERLY RULED THAT  
 12 NINTH CIRCUIT -- EVEN THE MODEL JURY INSTRUCTIONS SAY NO, YOU  
 13 HAVE THAT AS AN ALTERNATIVE MEASURE.  
 14 AND SO THEY WENT AT IT AGAIN. YOUR HONOR IN YOUR  
 15 MOST RECENT ORDER LAST -- LAST MONTH AGAIN RULED ON THAT. SO --  
 16 SO THEY KNEW THIS WAS COMING.  
 17 THEY -- THEY -- THEY HAVE TRIED DIFFERENT WAYS TO DO  
 18 IT, AND THIS IS THEIR LATEST, YOU KNOW, ATTEMPT TO TRY AND  
 19 LEVERAGE AN ORDER ON LOST PROFITS INTO THIS FAIR MARKET VALUE  
 20 CONCEPT. AND THEY'RE DOING IT IN A WAY THAT'S COMPLETELY  
 21 INAPPROPRIATE. I CAN GO THROUGH WHY THAT -- YOU KNOW, THE  
 22 HISTORY OF THAT PRIOR ORDER, IT WAS CLEARLY LIMITED TO LOST  
 23 PROFITS.  
 24 NOW, THE BACK-DOOR ISSUE --  
 25 THE COURT: AS A SEPARATE MEASURE OF DAMAGES.

1 MR. PICKETT: AS A SEPARATE MEASURE OF DAMAGES.  
 2 IT --  
 3 AND NOW TO SAY THAT IT IMPACTS THIS ALTERNATIVE --  
 4 WHAT, IN EFFECT, IS OUR PRIMARY DAMAGE METHOD DOESN'T FIT THE  
 5 FACTS OF THE RECORD. IT'S NOT JUST WHAT THEY SAID THAT, QUOTE,  
 6 THAT IT DOES NOT EXTEND TO ORACLE'S HYPOTHETICAL LICENSE THEORY.  
 7 ALL OF THE BRIEFS WERE ON THE LOST PROFITS ISSUE.  
 8 THE ONLY ISSUE AT ALL THAT CAME IN WAS ON A -- ON THE  
 9 APPEAL -- IS THAT THE PROPER PROCEDURAL REVIEW -- WHATEVER WE  
 10 CALL IT, THE -- THE DE NOVO REVIEW --  
 11 THE COURT: RIGHT.  
 12 MR. PICKETT: -- THAT YOU DO, IN WHICH THERE WAS A  
 13 CONCERN EXPRESSED, WELL, WHAT ABOUT THIS DIFFERENCE, THEN,  
 14 BETWEEN -- WE'RE GOING TO HAVE A BIG DIFFERENCE -- AND, YOUR  
 15 HONOR, AND -- BETWEEN THE FAIR MARKET VALUE AND THE LOST  
 16 PROFITS, AND YOUR HONOR -- ASSUMING, BY THE WAY, THAT THIS --  
 17 THIS OTHER ELEMENT WOULD BE IN THE FAIR MARKET VALUE -- AND YOUR  
 18 HONOR SAID NO, I'M GOING TO COMPROMISE. I'M NOT GOING TO LET  
 19 YOU GET THAT IN, BUT IF THE DEFENDANTS TAKE THE POSITION AT  
 20 TRIAL THAT ORACLE'S DAMAGES ARE EXCESSIVE, ORACLE WILL BE  
 21 PERMITTED TO ADVISE THE JURY THAT IT IS NOT SEEKING ALL THE  
 22 DAMAGES TO WHICH IT BELIEVES IT IS ENTITLED IN THE LOST PROFITS  
 23 PIECE. SO THAT'S JUST ALL RELATED TO THIS LOST PROFITS PIECE.  
 24 NOW, ON A -- ON A MOTION IN LIMINE, WE'RE SEEKING  
 25 SOMEHOW TO TRANSMOGRIFY THIS LOST PROFITS ISSUE INTO THE

1 AND THEN THEIR EXPERT MADE THE CHOICE -- HE DID NOT  
 2 HAVE TO GO THERE. HE DID NOT HAVE TO TURN AROUND AND DECIDE  
 3 THAT I'M GOING LOOK AT CROSS-SELL AND UP-SELL --

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1 SEPARATE FAIR MARKET VALUE. THEY'RE COMPLETELY DIFFERENT. ONE  
 2 LOOKS AT DAMAGES -- AND WE'VE BEEN THROUGH THIS A LOT IN THIS  
 3 CASE. ONE LOOKS AT DAMAGES WITH HINDSIGHT. ONE LOOKS AT  
 4 EXPECTATIONS. AND YOU REALLY CANNOT FAIRLY EXTENT THAT IN --  
 5 PARTICULARLY ON THIS RECORD, PARTICULARLY WITHOUT THE BRIEFING  
 6 WE'VE GONE THROUGH.  
 7 SO I THINK AS TO THE MOTION TECHNICALLY, IT --  
 8 THE COURT: OKAY. OKAY. OKAY.  
 9 MR. McDONELL: YOUR HONOR, I HAVE TWO -- IF I MAY  
 10 ALLOWED TWO VERY QUICK POINTS WITH APOLOGIES TO YOUR SCHEDULE,  
 11 WHICH WE ALL SHARE YOUR INTEREST.  
 12 TWO POINTS.  
 13 ONE, IT HAS TO BE ABSOLUTELY CLEAR THAT NO  
 14 CROSS-SELL, UP-SELL, OR SALES OF -- OR EVIDENCE OF LOST SALES --  
 15 ACTUAL LOST SALES TO ANYONE OTHER THAN TOMORROWNOW CUSTOMERS FOR  
 16 SUPPORT IS PERMITTED. THAT PART'S CRYSTAL CLEAR.  
 17 THE COURT: I DON'T THINK THERE'S ANY DISAGREEMENT  
 18 WITH THAT, IS THERE?  
 19 MR. McDONELL: AND I THINK THERE'S NO DISAGREEMENT ON  
 20 THAT. THAT'S THE FRONT DOOR.  
 21 ON THE BACK DOOR, WHAT HAPPENED IS THEY DID OBJECT TO  
 22 YOU ON JUDGE LAPORTE'S ORDER AND THEY DID ASK YOUR HONOR, ALLOW  
 23 US TO USE THIS EVIDENCE. ADMIT THIS EVIDENCE TO BOLSTER OUR  
 24 LARGER HYPOTHETICAL LICENSE CLAIM, TO WHICH YOUR HONOR SAID NO,  
 25 YOU CAN'T DO THAT.

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10 THE COURT: ALL RIGHT. WE'RE OUT OF TIME.  
11 I WILL GIVE YOU ONE MINUTE EACH IF YOU WANT TO SAY  
12 SOMETHING ABOUT THE DAUBERT RULING.  
13 MR. LANIER: I'M STICK TO MY 30 SECONDS, YOUR HONOR.  
14 THE COURT: OKAY.  
15 MR. LANIER: FORGET ALL OF THE CRITIQUES OF THEIR  
16 QUALIFICATIONS OR THEIR METHODOLOGIES. YOUR HONOR'S RULING ON  
17 SUMMARY JUDGMENT ELIMINATING SAVED ACQUISITION COSTS SHOULD  
18 RENDER MR. PINTO, MR. RIEFER, AND MR. GARMUS MOOT BECAUSE THEY  
19 ONLY ADDRESS THAT SAVED ACQUISITION COSTS REMEDY.  
20 SIMILARLY, YOUR HONOR'S RULING ON SAVED ACQUISITION  
21 COSTS ALSO SPOKE TO THE FAIR MARKET VALUE LICENSE THEORY. IT  
22 SAID THAT IT HAD TO VALUE THE IP AT ISSUE.  
23 MR. MEYER'S FAIR MARKET VALUE LICENSE METHODOLOGY  
24 VALUES COMPLETE CORPORATE ACQUISITIONS, INCOME STREAMS, AND  
25 NEVER VALUES THE IP AT ISSUE.

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1 WE'LL REST WITH THAT.  
2 THE COURT: OKAY. AND THE ONLY THING THAT I WILL SAY  
3 ABOUT THAT IS IT WAS NOT CLEAR TO ME BECAUSE THE WAY THAT YOU  
4 ALL FRAMED YOUR MOTIONS, YOU WERE OBJECTING TO CERTAIN OPINIONS  
5 AND CERTAIN PARTS. IT WASN'T ENTIRELY CLEAR TO ME WHAT THE  
6 EXPERTS WERE GOING TO TESTIFY TO IN ADDITION TO THE  
7 OBJECTIONABLE PARTS.  
8 AND I TOTALLY AGREE, THERE SHOULD BE NO -- THERE WILL  
9 BE NO TESTIMONY FROM AN EXPERT ON SAVED ACQUISITION COSTS.  
10 THAT'S OUT OF THE CASE.

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