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19 Attorneys for Plaintiff Oracle International Corp.

20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA
 22 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,
 24 Plaintiffs,
 25 v.
 26 SAP AG, *et al.*,
 27 Defendants.

No. 07-CV-01658 PJH (EDL)

**ORACLE'S STATEMENT REGARDING
 TRIAL SCHEDULE**

Judge: Hon. Phyllis J. Hamilton

28

1 **ORACLE’S STATEMENT REGARDING TRIAL SCHEDULE**

2 Pursuant to the Court’s final pre-trial order of May 29, 2012 (Dkt. 1171 at 6), and as
3 requested by the Court at the pre-trial hearing on May 24, 2012, plaintiff Oracle International
4 Corp. (“Oracle”) writes to advise the Court of the status of the conflict between the June 4, 2012
5 trial of Oracle lead counsel, Mr. Boies, and the scheduled trial date of June 18, 2012 in this case.

6 As Oracle has previously informed the Court, Mr. Boies is also lead trial counsel in the
7 matter of *Invista B.V., et al. v. E.I du Pont de Nemours and Company*, 08 Civ. 3063 (SHS)
8 (S.D.N.Y.). (Dkt. 1109 at 2:7-11.) That case remains set for trial in New York beginning on
9 June 4, 2012, and is still expected to last six weeks. (*Id.*) There has been no settlement, and the
10 court in that case has informed the parties that the June 4 trial date is firm.

11 Having considered the Court’s suggestion that Oracle proceed to trial on June 18, 2012
12 with other counsel, Oracle declines to do so. Oracle specifically retained Mr. Boies to try this
13 case, and Mr. Boies has been deeply engaged in the matter, including before, during and since
14 the original trial. Moreover, Oracle relied on the Court’s February 28, 2012 order (Dkt. 1110),
15 which made clear that the June 18 trial date in this matter would be vacated if Mr. Boies’ New
16 York case proceeded to trial, in planning for the retrial in this matter. Mr. Boies and the other
17 members of Oracle’s trial team have prepared for the upcoming trial based on the understanding
18 that Mr. Boies would be able to serve, whether on June 18 or thereafter, as lead counsel with
19 substantial responsibility for both argument and the examination of witnesses, consistent with his
20 role in the original trial. To change course now and ask other counsel to stand in for Mr. Boies
21 just weeks before trial would prejudice Oracle.

22 Accordingly, Oracle elects to proceed pursuant to the terms of the February 28, 2012
23 order and the May 29, 2012 pre-trial order. If, as expected, Mr. Boies’ New York trial begins on
24 June 4, Oracle will at that time request that the Court vacate the June 18, 2012 trial date, so that
25 the parties may prepare on four weeks’ notice for a trial that will trail the conclusion of the New
26 York trial and the Court’s availability. Oracle will keep the Court apprised of the progress of the
27 New York trial, and will promptly inform the Court of any relevant developments. Oracle
28 understands that the difficulty of finding another three-week opening may delay resolution of

1 this matter, but cannot compromise its choice of counsel or its right to fully and fairly present its
2 case in order to obtain an earlier trial date.

3
4 DATED: May 31, 2012

BOIES, SCHILLER & FLEXNER LLP

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6 By: /s/ Steven C. Holtzman
7 Steven C. Holtzman
8 Attorneys for Plaintiff Oracle International
9 Corp.
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