

# **EXHIBIT A**

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 641 - 753
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	FRIDAY, NOVEMBER 5, 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 A. THAT'S CORRECT.  
 2 Q. AND YOU ARE NOT AWARE OF ANYONE AT SAP EVER TRYING TO  
 3 LICENSE THE BASIC SOFTWARE OF A COMPETITOR TO USE TO COMPETE  
 4 WITH THAT COMPETITOR FOR MAINTENANCE AND SUPPORT OF THAT  
 5 COMPETITOR'S INSTALLATIONS, ARE YOU, SIR?  
 6 A. THAT'S CORRECT.  
 7 Q. DO YOU HAVE ANY IDEA OR UNDERSTANDING, DON'T WANT YOU TO  
 8 SPECULATE, JUST WANT TO KNOW IF YOU HAVE ANY IDEA OR  
 9 UNDERSTANDING AT ALL, ANY RANGE OF HOW MUCH SAP WOULD CHARGE  
 10 ORACLE FOR A LICENSE FOR ALL OF YOUR SOFTWARE IN ORDER TO  
 11 COMPETE WITH YOU TO PROVIDE MAINTENANCE AND SUPPORT FOR YOUR  
 12 CUSTOMERS?  
 13 A. I DON'T KNOW THAT.

14 MR. BOIES: NO MORE QUESTIONS.  
 15 THE COURT: IS THERE ANYTHING ELSE, MR. LANIER?  
 16 MR. LANIER: NO, YOUR HONOR.  
 17 THE COURT: THANK YOU, MR. BRANDT. YOU MAY STEP  
 18 DOWN.  
 19 THE WITNESS: (ENGLISH) THANK YOU.  
 20 OUR THANKS TO THE INTERPRETER. YOU MAY STEP DOWN AS  
 21 WELL.  
 22 THE INTERPRETER: THANK YOU.  
 23 THE COURT: WE ARE AT THE CLOSE OF THE DAY. AT THIS  
 24 TIME WE ARE GOING TO EXCUSE THE JURY. KEEP IN MIND OVER THE  
 25 WEEKEND THE INSTRUCTIONS THAT I'VE GIVEN YOU FROM TIME TO TIME:

1 THE COURT: THAT'S 25 --  
 2 MR. LANIER: PER SIDE. NOT NEW, JUST TOTAL FROM THE  
 3 BEGINNING 25 PER SIDE.  
 4 MR. PICKETT: I HAVE DONE OTHER CALCULATIONS, AS YOU  
 5 MIGHT IMAGINE.  
 6 I THINK THE TOTAL IS PROBABLY RIGHT. AND WHAT WE  
 7 HAVE IN MIND, IF IT'S ACCEPTABLE TO YOUR HONOR, IS CLOSING  
 8 TUESDAY STARTING IN THE MORNING AT 8:30. BOTH SIDES -- CLOSE  
 9 WITH THE REBUTTAL. AND THAT WOULD BE DONE WITHIN A FOUR AND A  
 10 HALF HOUR PERIOD. SO IT WOULD GET TO THE JURY.  
 11 THE QUESTION I HAVE IS WHETHER YOUR HONOR WOULD  
 12 INSTRUCT THERE OR WOULD YOU LET THEM -- I KNOW THEY WILL  
 13 DELIBERATE AFTER 1:30. ARE THEY PERMITTED TO BE -- AND IS IT  
 14 YOUR HONOR'S PREFERENCE TO INSTRUCT THEM? I WOULD GUESS THE  
 15 INSTRUCTIONS WOULD TAKE 45 MINUTES?  
 16 THE COURT: NOT THAT LONG. THERE ARE NOT GOING TO  
 17 BE THAT MANY OF THEM ONCE WE FINISH.  
 18 MR. PICKETT: WOULD THAT BE YOUR --  
 19 THE COURT: I WOULD WANT ARGUMENTS AND INSTRUCTIONS  
 20 TO TAKE PLACE ON THE SAME DAY. I WOULD MAKE TUESDAY A FULL DAY  
 21 FOR THE JURY, THAT TUESDAY. SO WE WOULD START AT 8:30, BUT  
 22 THEY WOULD BE HERE UNTIL 4:30.  
 23 MR. PICKETT: SO IT'S PLENTY OF TIME --  
 24 THE COURT: WE CAN DO IT ALL ON THAT DAY ASSUMING  
 25 THAT THE EVIDENCE CONCLUDES BY MONDAY.

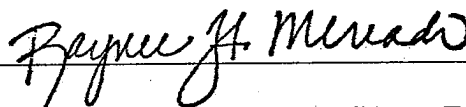
1 YOU ARE NOT TO CONDUCT ANY INDEPENDENT RESEARCH ABOUT THE CASE,  
 2 YOU ARE NOT TO COMMUNICATE WITH ANYONE ABOUT THE CASE, AND YOU  
 3 ARE NOT -- YOU ARE TO AVOID ANY NEWS STORIES ABOUT THE CASE  
 4 WHETHER IT BE BROADCAST OR PRINT MEDIA.  
 5 HAVE A VERY GOOD WEEKEND, AND WE WILL RESUME AT  
 6 8:30 ON MONDAY MORNING. THANK YOU.  
 7 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)  
 8 THE COURT: WE HAVE A COUPLE OF THINGS WE NEED TO  
 9 DISCUSS.  
 10 I WOULD ALSO LIKE TO MAKE AN ANNOUNCEMENT FOR ANY  
 11 PRESS PEOPLE WHO ARE HERE. IF YOU NEED TO -- IF YOU WANT TO BE  
 12 ADDED TO OUR MEDIA LIST, WHICH IS THE LIST THAT SOME COURT  
 13 PERSONNEL WILL CONTACT WHEN EVENTS OCCUR IN THIS CASE, YOU WILL  
 14 NEED TO LEAVE A BUSINESS CARD WITH THE COURTROOM DEPUTY BEFORE  
 15 YOU LEAVE.  
 16 OKAY. NOW, THERE ARE A COUPLE OF THINGS WE NEED TO  
 17 TALK ABOUT BEFORE WE ADJOURN TODAY. AND I HAVE A SHORT LIST.  
 18 YOU ALL WERE GOING TO MAKE SOME CALCULATIONS AND  
 19 GIVE ME SOME RECALCULATIONS WITH REGARD TO A PROPOSAL TO GET  
 20 THIS CASE TO THE JURY ON TUESDAY BEFORE THANKSGIVING.  
 21 MR. LANIER: YOUR HONOR, WE DID THOSE CALCULATIONS  
 22 ACTUALLY BEFORE WE TALKED TO YOUR HONOR BEFORE TRIAL, AND THAT  
 23 WAS WHERE OUR 25 HOURS A SIDE CAME FROM. THAT ACTUALLY  
 24 MAGICALLY WORKS TO GET US GIVING THE CASE TO THE JURY ON  
 25 TUESDAY BEFORE THANKSGIVING.

1 MR. PICKETT: THAT'S WHAT I HAD IN MIND.  
 2 MR. LANIER: I THINK 25 HOURS PER SIDE, WE MIGHT  
 3 HAVE TO EXERCISE A LITTLE DISCRETION ON OUR SIDE, BUT WE ARE  
 4 WILLING TO DO IT TO CONCLUDE EVIDENCE BY THE END OF MONDAY, AND  
 5 WE CAN DO THAT.  
 6 THE COURT: IF EVERYTHING IS IN BY MONDAY, AND IF  
 7 YOU DON'T HAVE ENOUGH TIME FOR YOUR ARGUMENTS ON TUESDAY, I  
 8 MEAN, IT'S WIDE OPEN. YOU CAN TAKE WHATEVER TIME YOU THINK IS  
 9 REASONABLY NEEDED TO CONCLUDE YOUR ARGUMENTS REGARDLESS OF HOW  
 10 MUCH TIME YOU HAVE. PARTICULARLY IF YOU CAN GET IT DONE BY THE  
 11 END OF DAY ON MONDAY.  
 12 MR. LANIER: GREAT.  
 13 MR. PICKETT: I WOULD CONTEND IT SHOULDN'T BE QUITE  
 14 EXACTLY EVEN AT THIS POINT, AND LET ME EXPLAIN WHY. BECAUSE WE  
 15 STARTED THE CASE WITH THE 30/30 UNDERSTANDING. AND SO OUR  
 16 FIRST WEEK WAS PLANNED THAT WAY. OPENING STATEMENTS WAS  
 17 PLANNED THAT WAY.  
 18 MOREOVER -- SO THE FIRST TWO DAYS WE WERE ON A 30/30  
 19 SCHEDULE. NOW WE ARE TRYING TO TRIM IT DOWN. I DON'T THINK  
 20 OUR DEFICIT, IN OTHER WORDS, I THINK CAN BE EXPLAINED OR  
 21 EXCUSED SOMEWHAT BY THAT, NOT THE WHOLE THING, BUT A PIECE OF  
 22 IT.  
 23 SECONDLY, MR. BRANDT JUST TODAY OPENED UP A BRAND  
 24 NEW ISSUE FOR US. THEY SAID IN THEIR OPENING "WE TOOK  
 25 RESPONSIBILITY". THEY STIPULATED TO INFRINGEMENT WHICH IS

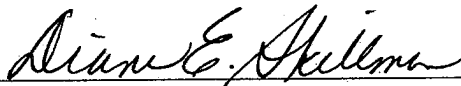
CERTIFICATE OF REPORTER

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, FRIDAY, NOVEMBER 5, 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

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
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PLAINTIFFS,	)	NO. C 07-01658 PJH
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VS.	)	VOLUME 7
	)	
SAP AG, ET AL.,	)	PAGES 1188 - 1420
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DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	FRIDAY, NOVEMBER 12, 2010

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FOR PLAINTIFFS:

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DIANE E. SKILLMAN, CSR NO. 4909

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

1 Q. WHY NOT?  
 2 A. BECAUSE OF THE MAGNITUDE OF THE RISK TO ORACLE OF LICENSING  
 3 ITS IMPORTANT SOFTWARE TO ITS CHIEF COMPETITOR, SAP. AND I JUST  
 4 CANT EMPHASIZE ENOUGH HOW IMPORTANT IT IS THAT WE'RE IN  
 5 JANUARY 2005 ON THE HEELS OF THE PEOPLESOFT ACQUISITION FOR  
 6 \$11 BILLION AND THE NEXT DAY, YOU'RE GIVING YOUR CHIEF  
 7 COMPETITOR, WHO HAS STILL DOUBLE YOUR MARKETSHARE IN THE ERP  
 8 MARKET, THIS VERY IMPORTANT LICENSE THAT BASICALLY IS THE KEYS  
 9 TO OPENING UP THE CUSTOMER DOOR AND 10,000 CUSTOMERS AND GOING  
 10 IN AND SAYING, HEY, WE HAVE THE SAME THING THAT ORACLE HAS. WE  
 11 CAN SERVICE YOU FROM NOW FOR THE NEXT TEN YEARS ON YOUR OLD  
 12 SYSTEMS AND HELP YOU GET TO NEW SYSTEMS OVER TIME.  
 13 THAT'S JUST A VERY VALUABLE ASSET THAT ORACLE PAID  
 14 \$11 BILLION FOR. SO YOU HAVE TO WORK THAT INTO THE EQUATION.  
 15 THERE'S JUST -- IT'S JUST HOW IT HAS TO BE DONE. AND IT HAS TO  
 16 BE PAID UP FRONT SO THAT ORACLE IS NOT SITTING THERE WONDERING,  
 17 AM I GOING TO BE PAID \$10 MILLION, \$20 MILLION, A HUNDRED  
 18 MILLION DOLLARS?  
 19 AND YOU'VE SEEN THE RESULTS OF THE OTHER SIDE OF THE  
 20 CALCULATIONS, AND THERE'S NO WAY THEY COULD EVER JUSTIFY AND  
 21 ACCEPT THE RUNNING ROYALTY.  
 22 Q. LET ME TURN TO THE NEXT TOPIC. MR. MITTELSTAEDT ASKED YOU  
 23 SOME QUESTIONS ABOUT THE SCOPE OF WHAT'S TO BE VALUED FOR THESE  
 24 LICENSES.  
 25 DO YOU RECALL THAT?

1 THIS IS A WIDE VARIETY OF REAL PROPERTY THAT YOU HAVE  
 2 BASICALLY IN JANUARY 2005 TO GO OUT AND SERVICE. SO YOU DON'T  
 3 HAVE TO SIT THERE YOURSELF AND ACTUALLY CREATE THE SOFTWARE.  
 4 YOU HAVE THE SOFTWARE. AND THAT'S THE REAL PROPERTY THAT --  
 5 THAT I'M VALUING. IT'S NOT SOMETHING -- IT'S NOT EVEN  
 6 INTANGIBLE. IT'S REAL PROPERTY THAT WAS TAKEN.  
 7 Q. AND WOULD YOU LOWER THE VALUE OF WHAT THEY TOOK IF SOMEHOW,  
 8 THEY HAD DECIDED NOT TO USE IT YEARS LATER?  
 9 A. NO, BECAUSE THEY BASICALLY HAD THIS IN THEIR -- IN THEIR  
 10 POSSESSION TO DO WHATEVER THEY WANTED TO DO. IT COULD HAVE GONE  
 11 TO 10,000 PEOPLESOFT CUSTOMERS; PLUS, MORE IMPORTANTLY, THE  
 12 4,000 JOINT CUSTOMERS, THE CUSTOMERS THAT ALREADY WERE SAP THAT  
 13 HAD PEOPLESOFT. AND THEY COULD GO TO THOSE CUSTOMERS AND SAY,  
 14 WE HAVE THIS SOFTWARE AND WE CAN NOW SERVICE PEOPLESOFT AND MAKE  
 15 YOU ONE COMBINED UNIFIED PLATFORM.  
 16 Q. NOW, ANOTHER QUESTION YOU GOT ASKED ON TUESDAY WAS ABOUT  
 17 WHETHER THERE WAS ROOM FOR SAP TO MAKE A PROFIT.  
 18 DO YOU RECALL THAT?  
 19 A. YES, I WAS ASKED THAT.  
 20 Q. AND ASSUMING DEFENDANTS HAVE TO MAKE A PROFIT, ASSUMING  
 21 THAT, AT YOUR OPINION OF THE VALUE OF THE THREE LICENSES, THE  
 22 PEOPLESOFT, THE SIEBEL, AND THE DATABASE, IS THERE STILL AN  
 23 OPPORTUNITY FOR SAP TO MAKE A PROFIT AT THE LICENSE FEE OPINIONS  
 24 THAT YOU HAVE?  
 25 A. YES, BASED ON MY VALUATION OF LICENSES, SAP COULD HAVE TAKEN

1 A. YES, I DO.  
 2 Q. LET'S TAKE A LOOK AT SLIDE 11 FROM YOUR DIRECT EXAMINATION.  
 3 (EXHIBIT PUBLISHED TO JURY.)  
 4 BY MR. PICKETT:  
 5 Q. COULD YOU REMIND THE JURY AGAIN WHAT THIS SLIDE DEPICTS WITH  
 6 RESPECT TO SCOPE OF THE LICENSE?  
 7 A. YES, IT'S AN IMPORTANT SLIDE, AND IT'S A DIFFICULT CONCEPT  
 8 BECAUSE A LICENSE IS HARD TO SORT OF GET YOUR HANDS AROUND. AND  
 9 WHAT THIS CHART WAS MEANT TO DO, AND MAYBE IT WASN'T OBVIOUS, IS  
 10 THAT IN THIS CASE, THEY'RE NOT JUST GETTING A LICENSE TO BE  
 11 ABLE -- AND GO GIVE SERVICE ON PEOPLESOFT CUSTOMERS. THEY  
 12 ACTUALLY RECEIVED REAL PROPERTY, REAL SOFTWARE.  
 13 AND SO ON THE LEFT-HAND SIDE IS JUST SORT OF LEGAL  
 14 RIGHTS AT THE TOP, 105 COPYRIGHT REGISTRATIONS, AND THEN IT SORT  
 15 OF DEPICTS HOW THAT TOOK FORM, YOU KNOW. IT'S AT LEAST HUNDREDS  
 16 OF THOUSANDS OF SOFTWARE FILES, AT LEAST THOUSANDS OF COPIES OF  
 17 ENTIRE APPLICATIONS, AND AT LEAST HUNDREDS OF THOUSANDS OF  
 18 DOWNLOADS. SO THAT'S SORT OF THE ACTIVITY.  
 19 BUT THE VISUAL OF THE PROPERTY IS ON THE RIGHT-HAND  
 20 SIDE. THE RIGHT-HAND SIDE, THESE ARE -- THIS IS ACTUAL PROPERTY  
 21 THAT -- THAT SAP/TOMORROWNOW RECEIVED. AND THEY RECEIVED THESE  
 22 IN THE FORM OF SOFTWARE OBJECTS, SOFTWARE UPDATES, THESE BUG  
 23 FIXES AND PATCHES THAT MR. ELLISON TALKED ABOUT HERE AT TRIAL.  
 24 THE SOFTWARE APPLICATIONS, THE INSTRUCTIONAL MANUALS, AND THESE  
 25 CUSTOM SOLUTIONS.

1 THIS LICENSE AND GONE AND EXECUTED ON THEIR PLANS, AND THEY  
 2 COULD STILL MAKE A PROFIT ON -- I FEEL VERY COMFORTABLE ABOUT  
 3 THAT.  
 4 Q. ALL RIGHT. NOW, LET ME TURN TO ANOTHER TOPIC RAISED BY  
 5 SAP'S COUNSEL. HE SPENT A FAIR AMOUNT OF TIME BOTH TUESDAY AND  
 6 TODAY ASKING YOU QUESTIONS ABOUT WHAT HAPPENED AFTER JANUARY 19,  
 7 2005.  
 8 IN YOUR OPINION, IN MEASURING THE FAIR MARKET VALUE  
 9 OF A LICENSE NEGOTIATED JANUARY 19, 2005, SHOULD YOU, THE JURY,  
 10 OR THE PARTIES HAVE CONSIDERED EVENTS THAT OCCURRED AFTER THAT  
 11 DATE?  
 12 A. NO, I DON'T BELIEVE THEY -- THEY SHOULD. AND, REALLY, THE  
 13 MAIN REASON IS THAT IN THIS CIRCUMSTANCE, THERE'S -- THERE'S A  
 14 WEALTH AND AN ABUNDANCE OF INFORMATION ABOUT THE PROJECTIONS AND  
 15 THE EXPECTATIONS OF WHAT SAP WAS GOING TO ACCOMPLISH BY TAKING  
 16 THE SOFTWARE. AND THERE'S SO MUCH INFORMATION.  
 17 AS I MENTIONED ON MY DIRECT TESTIMONY, IT'S NOT FROM  
 18 LOW-LEVEL EMPLOYEES. IT'S INFORMATION THAT THE PEOPLE THAT RUN  
 19 THE COMPANY ARE MAKING DECISIONS ABOUT. AND THEY'RE GOING TO  
 20 MARKET AND LAUNCHING THIS AND TELLING THEIR CUSTOMERS AND  
 21 PUBLIC, WE HAVE THIS -- THIS RESOURCE, THIS SOFTWARE. WE'RE --  
 22 AND THEY'VE DEVELOPED A PLAN AND GONE MARKET WITH THEIR OWN  
 23 PROJECTIONS.  
 24 AND SO THERE'S NO REASON TO GO FORWARD AND SAY, WELL,  
 25 HOW'D THEY EXECUTE? BECAUSE THEY TOOK THE PROPERTY KNOWING HOW

1 GOOD THIS WAS GOING TO BE FOR SAP WHEN THEY WENT AND COMPETED  
2 WITH ORACLE HEAD TO HEAD FOR THOSE PEOPLESOFT CUSTOMERS.  
3 Q. NOW, WE'RE GETTING NEAR THE END, BUT I WANT TO GO THROUGH A  
4 FEW OF THE DOCUMENTS THAT YOU WERE SHOWN. AND I WANT TO SHOW  
5 YOU AND THE COURT WHAT WASN'T SHOWN FROM THOSE DOCUMENTS.  
6 SO LET'S START WITH YOUR OWN REPORT. SAP'S COUNSEL  
7 REFERRED YOU TO PAGE 144 OF YOUR OWN REPORT AND SUGGESTED THAT  
8 YOU SOMEHOW USED INFORMATION ABOUT ORACLE'S R & D EXPENDITURES  
9 AFTER THE DATE OF THE NEGOTIATION.  
10 (EXHIBIT PUBLISHED TO JURY.)  
11 BY MR. PICKETT:  
12 Q. WHAT DID YOU ACTUALLY WRITE IN YOUR REPORT?  
13 A. WELL, THIS IS IN MY REPORT. AND WHEN WE TALKED ABOUT THE  
14 RESEARCH AND DEVELOPMENT, THE WAY IT WAS PUT IN THE REPORT, THIS  
15 RELATES TO THE INVESTMENT BY ORACLE.  
16 I SAID, "ORACLE'S INVESTMENT OVER -- OF OVER  
17 \$1 BILLION IN FURTHER RESEARCH AND DEVELOPMENT FOR ITS  
18 PEOPLESOFT AND JD EDWARDS PRODUCTS SINCE THE ACQUISITION" -- AND  
19 THIS IS AN IMPORTANT PHRASE -- I SAID, "WHICH ORACLE WOULD  
20 REASONABLY UNDERSTAND THAT IT WOULD HAVE TO SPEND."  
21 AND THAT MEANS THAT THEY WOULD HAVE KNOWN AT THE TIME  
22 OF THE HYPOTHETICAL THEY'D HAVE TO KEEP INVESTING IN THE  
23 PRODUCTS, THE PATCHES, AND THE BUG FIXES TO KEEP THE SOFTWARE  
24 CURRENT.  
25 AND THEN I SAY, "AND THAT SAP WOULD HAVE (SIC) AVOID

1 THAT POINT.  
2 Q. SOME OF THE EMAILS SUGGESTED THAT ORACLE -- OR AT LEAST SOME  
3 PEOPLE AT ORACLE WERE NOT TAKING THE TOMORROWNOW THREAT  
4 PARTICULARLY SERIOUSLY.  
5 DO YOU RECALL THAT?  
6 A. YES, I DO.  
7 Q. DO YOU KNOW IF ORACLE WAS FULLY INFORMED AS TO TOMORROWNOW'S  
8 ACTIVITIES ON THE DATES OF THOSE EMAILS?  
9 A. MY UNDERSTANDING IS THAT ORACLE WAS NOT AWARE THAT  
10 TOMORROWNOW HAD THE SOFTWARE AND SOFTWARE SUPPORT MATERIALS, SO  
11 ORACLE'S UNDERSTANDING WAS THAT TOMORROWNOW COULD NOT OFFER THIS  
12 IMPORTANT DISTINCTION, WHICH IS CALLED THE VENDOR-LEVEL SERVICE,  
13 WHICH MEANS YOU CAN GET THE UPDATES AND THE PATCHES AND STAY  
14 CURRENT WITH YOUR HUMAN RESOURCES UPDATES AND WHATNOT.  
15 SO ORACLE DIDN'T BELIEVE THAT TOMORROWNOW HAD THAT  
16 CAPABILITY 'CAUSE IT'S VERY EXPENSIVE TO SPEND THE DEVELOPMENT  
17 DOLLARS TO STAY CURRENT.  
18 Q. LET'S TAKE A LOOK AT AN EXAMPLE OF THAT. THIS IS EXHIBIT IN  
19 EVIDENCE A374. THIS IS ONE OF THE EMAILS THAT YOU WERE SHOWN BY  
20 SAP'S COUNSEL.  
21 DO YOU SEE THAT?  
22 (EXHIBIT PUBLISHED TO JURY.)  
23 THE WITNESS: YES.  
24 BY MR. PICKETT:  
25 Q. AND IF WE GO TO THE NEXT PAGE OF THIS DOCUMENT, IS THERE AN

1 SPENDING BY VIRTUE OF THE LICENSE." SO SAP COULD TAKE THE  
2 LICENSE AND NOT SPEND THOSE DEVELOPMENT DOLLARS 'CAUSE ORACLE  
3 WOULD KEEP FORTIFYING THAT SOFTWARE WITH THE R & D DOLLARS.  
4 Q. SO YOU -- THANK YOU.  
5 NOW, LET'S TURN SOME TO SOME EMAILS YOU WERE SHOWN, A  
6 FAIR NUMBER OF EMAILS. SAP'S COUNSEL SHOWED YOU ORACLE EMAILS.  
7 DID HE SHOW ANY SAP EMAILS?  
8 A. NOT THAT I RECALL.  
9 Q. AND HOW ABOUT THE DATE? DID HE SHOW YOU ANY EMAILS AFTER  
10 THE JANUARY 19, 2005 NEGOTIATION DATE?  
11 A. FOR SAP?  
12 Q. FOR ANYONE.  
13 A. HE SHOWED ME SOME EMAILS FOR ORACLE THAT WERE CERTAINLY  
14 AFTER THAT POINT IN TIME.  
15 Q. RIGHT.  
16 AND ARE THE EMAILS AFTER THE DATE RELEVANT TO WHAT  
17 WOULD BE IN THE MINDS OF THE PARTIES ON OR BEFORE THE DATE?  
18 A. THEY WOULD NOT. THEY'RE -- THEY'RE NOT RELEVANT.  
19 Q. ALL RIGHT.  
20 NOW MR. MITTELSTAEDT CALLED THESE EMAILS REALITY  
21 CHECKS. DOES THAT MAKE ANY SENSE TO YOU?  
22 A. NO, THERE'S -- THERE'S NO REASON TO HAVE TO DO A REALITY  
23 CHECK IN THESE CIRCUMSTANCES TO MEASURE THE VALUE OF THIS  
24 LICENSE AT JANUARY 2005. I JUST DESCRIBED A MOMENT AGO WHY. SO  
25 IT WASN'T IMPORTANT TO GO FORTH AND TO LOOK AT INFORMATION PAST

1 INDICATION HERE OF THE ISSUE, THAT IS, THAT SAP -- I'M SORRY --  
2 THAT ORACLE DID NOT UNDERSTAND THAT TOMORROWNOW WAS TAKING BUGS  
3 AND FIXES, REGULATORY UPDATES, AND THE COPYRIGHTED SOFTWARE?  
4 A. YES, THIS IS MR. JONES. AND HE'S DESCRIBING A SITUATION  
5 WHERE BASICALLY IF YOU THINK THAT TOMORROWNOW DOESN'T REALLY  
6 HAVE THE UP-TO-DATE SOFTWARE, IT WOULD BE SORT OF THE -- A -- A  
7 POTENTIALLY LACKLUSTER, LESS-PERFORMING SERVICE OFFERING.  
8 AND SO HE'S MAKING THE COMPARISON. AND WHAT HE'S  
9 SAYING -- HE SAYS -- TO GIVE AN ANALOGY 'CAUSE HE DOESN'T  
10 BELIEVE THEY HAVE -- HE DOESN'T KNOW THEY HAVE THE SOFTWARE. HE  
11 SAYS, "COULD YOU IMAGINE TELLING YOUR DAD THAT YOU BOUGHT AN  
12 EXTENDED WARRANTY, NOT FROM THE MANUFACTURER, BUT FROM THE" --  
13 "BUT FROM SOME SHOP THAT LACKS CAPABILITIES AND ORIGINAL PARTS?"  
14 AND THEN HE SAYS, IN QUOTES, "WELL, DAD, IT WAS  
15 CHEAP, AND THE MECHANICS LACK CAPABILITIES. AND THEY JIMMY-UP  
16 THEIR OWN PARTS."  
17 AND THEN HE GOES ON, AND HE SAYS, YOU KNOW, "YES,  
18 DAD, I DON'T KNOW WHAT I'LL DO WHEN I HAVE IT UP TO 75 MILES PER  
19 HOUR." BUT "WHEN ONE OF THE PARTS BREAKS, IT WILL BE UNDER  
20 EXTENDED WARRANTY."  
21 AND THEN HE GOES ON AND SAYS, "WOULD YOU DRIVE SUCH A  
22 CAR? WOULD YOUR DAD LET YOU?"  
23 AND SO THAT'S HIS ANALOGY, 'CAUSE HE DOESN'T THINK --  
24 HE DOESN'T KNOW THAT TOMORROWNOW ACTUALLY HAS WHAT ORACLE HAS.  
25 THEY HAVE THE SAME SOFTWARE AND CAN PROVIDE THE SAME LEVEL OF

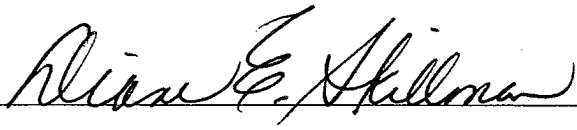
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CERTIFICATE OF REPORTER

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DIANE E. SKILLMAN, CSR, RPR, FCRR

SATURDAY, NOVEMBER 13, 2010



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.	)	JURY TRIAL
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PLAINTIFFS,	)	NO. C 07-01658 PJH
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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,  
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BOIES, SCHILLER & FLEXNER LLP  
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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 COVERED BY A MOTION IN LIMINE ORDER.  
 2 MR. BOIES: ALL --  
 3 THE COURT: WERE YOU GETTING READY TO SAY I WILL  
 4 WITHDRAW IT?  
 5 MR. BOIES: NO.  
 6 THE COURT: WHICH IN LIMINE ORDER?  
 7 MR. MITTELSTAEDT: ABOUT PRECLUDED EVIDENCE.  
 8 THE COURT: DO YOU REMEMBER WHICH NUMBER IT WAS?  
 9 THERE WAS A NUMBER OF THEM.  
 10 MR. MITTELSTAEDT: NUMBERS ONE AND TWO.  
 11 MR. BOIES: THIS JUST REQUIRES A "YES" OR "NO"  
 12 ANSWER AT THIS POINT.  
 13 THE COURT: YOU MAY ANSWER THIS QUESTION, BUT YOU  
 14 MAY NOT EXPLORE THAT AREA.  
 15 THE WITNESS: NO.  
 16 BY MR. BOIES:  
 17 Q. WHAT?  
 18 A. NO.  
 19 Q. OKAY.  
 20 MR. BOIES: LET ME PUT ONE QUESTION AND -- WHICH I  
 21 DON'T THINK HAS ANYTHING TO DO WITH THE IN LIMINE MOTIONS, YOUR  
 22 HONOR, BUT LET ME JUST PUT IT AND SEE.  
 23 BY MR. BOIES:  
 24 Q. DID YOU INVESTIGATE THE EXTENT TO WHICH ORACLE REDUCED  
 25 PRICES IN ORDER TO KEEP CUSTOMERS?

1 DO YOU RECALL THAT?  
 2 A. I DO.  
 3 Q. NOW, THE VALUATION DATE FOR THAT LICENSE WOULD HAVE BEEN  
 4 EITHER JANUARY 18TH OR JANUARY 19TH OF 2005; IS THAT CORRECT?  
 5 A. YES.  
 6 Q. AND WHEN YOU ARE VALUING SOMETHING AS OF A VALUATION DATE,  
 7 YOU NEED TO LOOK AT THE STATE OF AFFAIRS THAT EXISTS AT THAT  
 8 TIME, NOT SOME OTHER TIME. FAIR?  
 9 A. YES.  
 10 Q. SO THAT WHAT YOU WOULD BE LOOKING AT IS WHAT WOULD HAVE  
 11 BEEN IN THE MINDS OF SAP AND ORACLE ON JANUARY 18TH OR  
 12 JANUARY 19TH, CORRECT?  
 13 A. YES.  
 14 Q. ON JANUARY 18TH OR 19TH -- JUST SO I DON'T HAVE TO KEEP  
 15 SAYING IT, IN YOUR OPINION, IS IT THE 18TH OR IS IT THE 19TH?  
 16 A. LET'S CALL IT THE 19TH.  
 17 Q. ON JANUARY 19TH, NEITHER SAP NOR ORACLE HAD A CRYSTAL BALL  
 18 THAT WOULD HAVE TOLD THEM EXACTLY WHAT WAS GOING TO HAPPEN IN  
 19 THE FUTURE, CORRECT?  
 20 A. NO CRYSTAL BALL.  
 21 Q. SO ALL THEY COULD GO ON IN NEGOTIATING A LICENSE WAS WHAT  
 22 THEY KNEW AND BELIEVED AT THE TIME, CORRECT?  
 23 A. CORRECT.  
 24 Q. SO IN TERMS OF COMING UP WITH WHAT YOU REFER TO AS THIS  
 25 HYPOTHETICAL LICENSE, WHAT YOU ARE GOING TO BE DOING IS TRYING

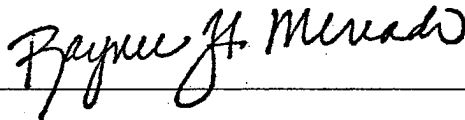
1 MR. MITTELSTAEDT: SAME OBJECTION.  
 2 THE COURT: I THINK THAT'S GETTING PRETTY CLOSE,  
 3 MR. BOIES.  
 4 MR. BOIES: WHY DON'T I -- I AM NOT GOING TO FINISH  
 5 TODAY ANYWAY. PERHAPS WE CAN TAKE THAT UP AT THE BREAK, YOUR  
 6 HONOR.  
 7 THE COURT: OKAY.  
 8 BY MR. BOIES:  
 9 Q. IN TERMS OF YOUR ANALYSIS OF THE LOST PROFITS TO ORACLE,  
 10 THE LOST PROFITS THAT YOU CALCULATED RELATED TO THE DEPRIVATION  
 11 OF A MAINTENANCE STREAM THROUGH 2008; IS THAT CORRECT?  
 12 A. YES.  
 13 Q. AND SOME OF THE CUSTOMERS FROM TOMORROWNOW WENT BACK TO  
 14 ORACLE, CORRECT?  
 15 A. YES.  
 16 Q. AND SOME DID NOT, CORRECT?  
 17 A. CORRECT.  
 18 Q. AND FOR THE CUSTOMERS THAT DID NOT GO BACK TO ORACLE, YOU  
 19 DID NOT INCLUDE ANY DAMAGES FOR PERIODS AFTER 2008; IS THAT  
 20 CORRECT?  
 21 A. THAT'S CORRECT.  
 22 Q. LET ME TURN TO THE LICENSE, FAIR VALUE -- FAIR MARKET  
 23 VALUE LICENSE. THAT IS SOMETHING THAT YOU TESTIFIED WAS  
 24 SOMETHING THAT IS NEGOTIATED BEFORE THE INFRINGEMENT BEGINS SO  
 25 IT SHOULD NOT HAVE A PUNISHMENT ELEMENT TO IT.

1 TO FIGURE OUT WHAT WOULD HAVE BEEN THEIR PLANS AND  
 2 EXPECTATIONS -- I THINK YOU USED THE WORD "FORECASTS" AT  
 3 JANUARY 19TH, 2005, CORRECT?  
 4 A. YES.  
 5 Q. NOW, DID YOU LOOK AT WHAT THE PLANS, PROJECTIONS,  
 6 FORECASTS WERE OF SAP AS TO WHAT THEY THOUGHT WAS GOING TO  
 7 HAPPEN ON JANUARY 19TH, 2005?  
 8 A. YES.  
 9 Q. AND WHAT DOCUMENTS DID YOU LOOK AT IN THAT CONNECTION AND  
 10 RELY ON?  
 11 A. I LOOKED AT THE BUSINESS CASE, WHICH I THINK WAS A  
 12 JANUARY 7TH DOCUMENT. AND THAT WAS THE DOCUMENT THAT HAD THE  
 13 FORECAST IN IT.  
 14 THE ONLY REASON I AM SLIGHTLY HESITANT ON THAT IS  
 15 YOU ASKED ME IF I RELIED UPON THAT. AND I CONSIDERED IT, BUT I  
 16 AM NOT SURE IT ROSE TO THE LEVEL OF RELIANCE. I DIDN'T BASE  
 17 ANY CALCULATION ON IT, IF YOU LIKE.  
 18 Q. NOW, IN ORDER TO COME UP WITH A VALUE OF A HYPOTHETICAL  
 19 LICENSE, YOU HAD TO FIGURE OUT WHAT SAP AND ORACLE WOULD HAVE  
 20 NEGOTIATED ON JANUARY 19TH, 2005, CORRECT?  
 21 A. YES.  
 22 Q. AND TO DO THAT YOU WOULD HAVE HAD TO DETERMINE WHAT YOU  
 23 BELIEVED WOULD HAVE BEEN IN THEIR MINDS ON THAT DATE, CORRECT?  
 24 A. YES. IN PART, YES.  
 25 Q. AND IN ORDER TO DO THAT, YOU WOULD HAVE NEEDED TO KNOW

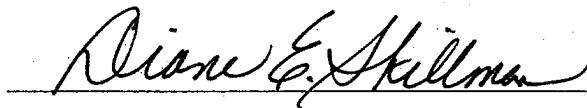
CERTIFICATE OF REPORTER

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 MCCUTCHEN LLP  
THREE EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111-4607

BY: ZACHARY J. ALINDER,  
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OAKLAND, CALIFORNIA 94612

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

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

1 BECAUSE MY QUESTION IS, DID YOU EVER INVESTIGATE WHAT  
 2 SAP WOULD HAVE DEMANDED IF IT WERE TO GIVE TO ORACLE THE SAME  
 3 LICENSE THAT IT NEEDED FROM ORACLE TO DO WHAT IT DID?  
 4 A. NO.  
 5 Q. DID YOU EVER HAVE ANY CONVERSATIONS WITH ANYONE FROM SAP AS  
 6 TO HOW MUCH SAP WOULD DEMAND FOR A LICENSE TO ALLOW ITS  
 7 COMPETITOR ORACLE TO MAINTAIN ITS SOFTWARE?  
 8 A. I DID NOT.

9 Q. AM I CORRECT THAT THE WAY YOU COME UP WITH YOUR FAIR MARKET  
 10 VALUE LICENSE, IT WOULDN'T MAKE ANY DIFFERENCE TO THE VALUE OF  
 11 THAT LICENSE HOW MANY COPIES -- HOW MANY INFRINGING COPIES  
 12 TOMORROWNOW OR SAP ILLEGALLY DOWNLOADED?  
 13 A. NO, I -- WELL, I DON'T THINK SAP'S PART OF THAT TALKS. I  
 14 DON'T THINK THEY DOWNLOADED ANYTHING INAPPROPRIATE, BUT TN DID.  
 15 AND I THINK THAT'S A CONSIDERATION AND ONE OF THE REASONS WHY I  
 16 ACTUALLY DID THE DISGORGEMENT OF THE INFRINGER'S PROFITS THE WAY  
 17 I DID IT AND WHY I CALCULATED A ROYALTY ON ALL OF -- OF  
 18 TOMORROWNOW'S REVENUES. SO I DIDN'T EXCLUDE -- I DIDN'T EXCLUDE  
 19 ANYONE FOR THE REASONABLE ROYALTY ON THE TOMORROWNOW SIDE.  
 20 SO I ASSUMED ALL OF THOSE REVENUES WERE GENERATED  
 21 INAPPROPRIATELY.  
 22 Q. YES, PERHAPS MY QUESTION WASN'T CLEAR.  
 23 BECAUSE YOU'RE FOCUSING ON THE REVENUES, IF  
 24 TOMORROWNOW HAD DOWNLOADED TWICE AS MANY ILLEGAL COPIES, THAT  
 25 WOULD NOT INCREASE YOUR ROYALTY PAYMENTS TO ORACLE AT ALL,

1 CONTRIBUTORILY INFRINGED 240 WORKS AS OPPOSED TO 120, THAT WOULD  
 2 NOT CHANGE YOUR FAIR MARKET VALUE LICENSE EVEN A DOLLAR,  
 3 CORRECT?  
 4 A. IT WOULD ONLY CHANGE IT IF THERE WAS MORE USE. REMEMBER,  
 5 WE'RE TRYING TO CALCULATE THE VALUE OF USE. AND IF THERE HAD  
 6 BEEN MORE USE, THAT WOULD HAVE PRESUMABLY GENERATED MORE  
 7 REVENUES, AND -- AND SO THERE'D HAVE BEEN MORE ROYALTY. SINCE  
 8 THAT DIDN'T HAPPEN, THE ANSWER IS NO.  
 9 Q. AND WHEN YOU SAY WE'RE TRYING TO CALCULATE USE, YOU MEAN  
 10 YOU'RE TRYING TO CALCULATE.  
 11 A. I'M TRYING TO --  
 12 Q. RIGHT.  
 13 A. I'M TRYING TO CALCULATE USE, YES.  
 14 Q. ALL RIGHT. AND THAT'S EXACTLY MY POINT. YOU'RE TRYING TO  
 15 CALCULATE USE AS REFLECTED IN REVENUES, CORRECT?  
 16 A. YES. I THINK THAT CAPTURES ALL OF THE USE.  
 17 Q. OH, IT DOES? YOU THINK SO?  
 18 A. I BELIEVE SO.  
 19 Q. SO IF THEY GIVE IT AWAY AND GET NO REVENUES, DOES THAT MEAN  
 20 THEY DON'T USE IT?  
 21 A. NO.  
 22 Q. OKAY.  
 23 A. IT WOULD -- AND IF I DIDN'T MAKE AN ADJUSTMENT FOR THE TIMES  
 24 THEY GAVE IT AWAY, YOU'D BE RIGHT. BUT I DID MAKE AN ADJUSTMENT  
 25 FOR THE TIMES THEY GAVE IT AWAY.

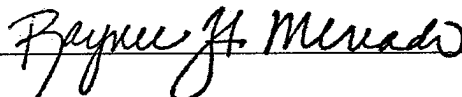
1 RIGHT?  
 2 A. CORRECT.  
 3 Q. AND IF -- AND YOU KNOW THAT ORACLE HAS CLAIMED AND, INDEED,  
 4 THE DEFENDANTS HAVE NOW ADMITTED THAT THERE WAS INFRINGEMENT OF  
 5 120 SEPARATE COPYRIGHTED WORKS.  
 6 DO YOU KNOW THAT?  
 7 A. I DO.  
 8 Q. IF THERE HAD BEEN INFRINGEMENT OF 240 COPYRIGHTED WORKS, THE  
 9 WAY YOU APPROACH THE FAIR MARKET VALUE LICENSE, THAT WOULDN'T  
 10 HAVE CHANGED IT \$1, CORRECT?  
 11 A. ONLY IF THERE'D BEEN MORE USE; IN OTHER WORDS, TO GENERATE  
 12 MORE REVENUE --  
 13 Q. MORE REVENUE.  
 14 A. -- THEN THAT WOULD HAVE RESULTED IN MORE ROYALTY. BUT THAT  
 15 DIDN'T HAPPEN, SO WE'RE DEALING WITH WHATEVER ACTUALLY HAPPENED,  
 16 AND THAT'S WHAT I'M TRYING TO VALUE.  
 17 Q. AND WHAT YOU'RE -- WHAT YOU'RE DOING IS YOU'RE VALUING IT  
 18 BASED NOT ON HOW MANY WERE DOWNLOADED, BUT -- OR HOW MANY WERE  
 19 USED OR HOW MANY COPYRIGHTED WORKS THERE WERE OR WHAT THE COST  
 20 OF THOSE WERE, BUT JUST THE REVENUES AS YOU CALCULATE THEM,  
 21 FAIR?  
 22 A. NO. THAT'S NOT FAIR.  
 23 Q. OKAY. IF THERE HAD BEEN -- AND I THOUGHT I ASKED YOU THIS  
 24 BEFORE, BUT LET ME ASK YOU AGAIN.  
 25 IF TOMORROWNOW HAD INFRINGED AND SAP HAD

1 Q. BUT YOU THEN HAVE TO MAKE AN ADJUSTMENT FOR THAT, DON'T YOU,  
 2 SIR?  
 3 A. YES.  
 4 Q. YOU CAN'T JUST LOOK AT THE REVENUES 'CAUSE THERE ARE NO  
 5 REVENUES WHEN THEY GIVE IT AWAY, CORRECT?  
 6 A. CORRECT. SO I CALCULATE WHAT THE REVENUES SHOULD HAVE BEEN  
 7 AND THEN CALCULATED MY ROYALTY ON THAT BASIS.  
 8 Q. AND WHEN YOU SAY "SHOULD HAVE BEEN," WHO DETERMINES WHAT  
 9 THEY SHOULD HAVE BEEN?  
 10 A. THERE WAS A REPORT CREATED BY AN EMPLOYEE OF TOMORROWNOW  
 11 THAT WENT THROUGH ALL OF THE CUSTOMERS THAT HAD DISCOUNTED  
 12 DEALS, AND PUT WHAT'S CALLED A STANDARD PRICING ON THOSE DEALS,  
 13 SO YOU -- BY KNOWING WHAT WAS SUPPORTED, YOU COULD PRETTY MUCH  
 14 WORK OUT WHAT THE ORACLE PRICE WAS.  
 15 AND I -- THE ESTIMATE, I THINK IT WAS, WOULD BE ABOUT  
 16 HALF OF THAT. IT'S SLIGHTLY DIFFERENT FROM JUST LOOKING AT  
 17 ORACLE'S PRICING BECAUSE NOT EVERYTHING ORACLE SUPPORTED WAS  
 18 SUPPORTED AT TOMORROWNOW. SO THIS REPORT SAID IF THESE ARE THE  
 19 PRODUCTS THAT ARE BEING SUPPORTED AT TOMORROWNOW AND YOU WERE  
 20 PAYING US WHAT WE NORMALLY CHARGE, THIS IS HOW MUCH YOU'D BE  
 21 PAYING. AND THAT WAS THE NUMBER I CALCULATED THE ROYALTY ON.  
 22 Q. SO YOU CALCULATED THE ROYALTY, WOULD IT BE FAIR TO SAY  
 23 CUTTING THROUGH SOME OF THAT, THAT YOU CALCULATED THE ROYALTY ON  
 24 THE BASIS OF ABOUT HALF OF WHAT ORACLE WOULD HAVE BEEN CHARGING?  
 25 A. I THINK THAT'S ABOUT RIGHT, YES.

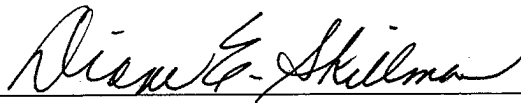
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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



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 11
	)	
SAP AG, ET AL.,	)	PAGES 1880 - 2020
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
_____	)	FRIDAY, NOVEMBER 19, 2010

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FOR PLAINTIFFS:

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DIANE E. SKILLMAN, CSR NO. 4909

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

1 SO WHAT IT MEANS IS THEIR STRATEGY, THEIR IDEA OF  
 2 WHAT WOULD BE FAIR CAN'T POSSIBLY BE FAIR. EVERY DOLLAR WE  
 3 LOSE, THEY PAY US BACK 25 CENTS? THAT'S -- CAN'T BE REASONABLE  
 4 COMPENSATION IN THIS MODEL. JUST DOESN'T MAKE SENSE IN THIS  
 5 CASE.  
 6 Q. ALL RIGHT. LET'S MOVE ON TO THE DATABASE RESELLER  
 7 AGREEMENT. IN YOUR EXPERIENCE, DOES THE ORACLE DATABASE  
 8 RESELLER AGREEMENT WITH SAP PROVIDE A GOOD BENCH MARK OR EXAMPLE  
 9 FOR THE FAIR MARKET VALUE LICENSES THAT WE'RE TALKING ABOUT  
 10 HERE?  
 11 A. ACTUALLY, IT -- IT DOESN'T MAKE ANY SENSE AT ALL. IN FACT,  
 12 ALL -- EXTRAPOLATING FROM ANY RESELLER AGREEMENT DOESN'T MAKE  
 13 SENSE --  
 14 (DEMONSTRATIVE PUBLISHED TO JURY.)  
 15 THE WITNESS: -- BECAUSE --  
 16 ACTUALLY, LET ME LAY THIS OUT FOR YOU.  
 17 MS. HOUSE: LET ME JUST TELL THE COURT WHAT THIS IS.  
 18 THIS IS PLAINTIFFS' DEMONSTRATIVE 18.  
 19 Q. COULD YOU EXPLAIN TO THE JURY WHAT YOU'RE TALKING ABOUT?  
 20 A. SURE. SO ON THE RIGHT SIDE IS HOW RESELLERS WORK. SO LET'S  
 21 SAY ORACLE HAS THIS MANY CUSTOMERS, RIGHT? AND A RESELLER, HE  
 22 SELLS OVER HERE, SO HE GETS EVEN MORE CUSTOMERS FOR US, OKAY.  
 23 AND THAT'S THE BIG DIFFERENCE. YOU START HERE, AND A RESELLER'S  
 24 A PARTNER. THEY HELP YOU GET CUSTOMERS YOU WOULDN'T OTHERWISE  
 25 GET ON YOUR OWN. OKAY?

1 LET SAP SELL SOME DATABASE TO US. THEY KEEP SOME OF THE MONEY  
 2 THEY GIVE US SOME OF THE MONEY. NET/NET, WE'RE MUCH BETTER OFF  
 3 THAN IF THEY DIDN'T SELL TO THOSE CUSTOMERS.  
 4 Q. AND JUST SO WE'RE CLEAR, DOES SAP'S ORACLE DATABASE RESELLER  
 5 AGREEMENT OR ANY OF THE PARTNER LICENSES THAT ORACLE HAS -- DO  
 6 ANY OF THEM ALLOW ORACLE'S PARTNERS OR RESELLERS TO USE ORACLE'S  
 7 INTELLECTUAL PROPERTY TO COMPETE AGAINST ORACLE FOR ORACLE'S  
 8 CUSTOMERS?  
 9 A. NO. NO, NO. IT'S THE EXACT OPPOSITE. IT'S LITERALLY THE  
 10 DIFFERENCE BETWEEN LEFT AND RIGHT HERE.  
 11 Q. OKAY.  
 12 TAKE THAT DOWN. THANK YOU.  
 13 IS THE DATABASE RESELLER AGREEMENT THE ONLY AGREEMENT  
 14 THAT ORACLE HAS WITH SAP?  
 15 A. NO. WE HAVE OTHERS.  
 16 Q. NOW, YOU HEARD ABOUT THE JAVA LICENSE. COULD YOU TELL ME  
 17 ABOUT THAT?  
 18 A. SURE. NOW, THE JAVA LICENSE -- I SORT OF DON'T KNOW WHY  
 19 THERE'S CONFUSION. THE JAVA LICENSE, WHEN DONE WITH SAP AND  
 20 WHEN IT WAS DONE WITH SUN, WAS A PREPAID LUMP-SUM AMOUNT OF A  
 21 MILLION FIVE A YEAR. PERIOD.  
 22 AND DURING THE FIRST FIVE YEARS OF IT, AND IT WAS  
 23 EXTENDABLE FOR ANOTHER FIVE YEARS, THERE WAS NO ACCOUNTING,  
 24 THERE WAS NO AUDIT RIGHTS OR ANYTHING. IT'S A MILLION FIVE. IT  
 25 WAS FOR A TCK LICENSE. IT'S NOT ACTUALLY FOR JAVA. A TCK

1 SO WHAT HAPPENS IS -- LET'S SAY YOU START WITH A  
 2 HUNDRED CUSTOMERS. IF YOU GET A RESELLER, MAYBE YOU GET 110,  
 3 120 CUSTOMERS.  
 4 OKAY. NOW, THAT'S RESELLERS. THAT MAKES SENSE.  
 5 THEN A RUNNING ROYALTY CAN MAKE SENSE IN THAT CASE.  
 6 ON THE OTHER SIDE, HERE WE HAVE -- ON THE LEFT SIDE,  
 7 WE HAVE ALREADY -- AND WE TALKED BIT FOR THREE WEEKS NOW --  
 8 14,000 CUSTOMERS BETWEEN PEOPLESOFT AND SIEBEL, 14,000. NOTHING  
 9 SAP/TOMORROWNOW DOES WITH THE INTELLECTUAL PROPERTY WE LICENSE  
 10 THEM GIVES US ONE MORE CUSTOMER. IT'S ALWAYS THE SAME 14,000.  
 11 SO INSTEAD OF WIN/WIN WHERE A RESELLER GETS YOU MORE CUSTOMERS,  
 12 IT'S WIN/LOSS. IT'S A ZERO-SUM GAME. THEY TAKE CUSTOMERS OUT  
 13 OF THE 14,000. YOU'D NEVER HAVE ANY MORE.  
 14 THAT'S THE PROBLEM. HOW COULD YOU POSSIBLY  
 15 EXTRAPOLATE FROM A MODEL THAT WORKS WHEN YOU'RE GROWING IN A  
 16 CASE WHERE IT'S A ZERO-SUM GAME. IT JUST DOESN'T MAKE SENSE.  
 17 Q. AND JUST TO BACK UP FOR A SECOND, COULD YOU EXPLAIN WHY IT  
 18 IS THAT YOU DECIDED TO LET SAP BE ONE OF THE RESELLERS OF THE  
 19 ORACLE DATABASE?  
 20 A. WELL, SURE. I MEAN, WE HAVE A LOT OF RESELLERS. BUT  
 21 REMEMBER, SAP'S THE LARGEST ENTERPRISE SOFTWARE COMPANY, AND  
 22 WHEN A CUSTOMER BUYS ERP SOFTWARE, ACCOUNTING, HR, THEY HAVE TO  
 23 RUN IT ON A DATABASE. AND SO WE'D LIKE ACCESS TO ALL THOSE  
 24 CUSTOMERS THAT SAP -- THEY'RE SAP CUSTOMERS, BUT THEY NEED A  
 25 DATABASE, SO WE'RE VERY HAPPY TO HAVE -- HERE ARE OUR CUSTOMERS,

1 LICENSE IS A TEST KIT TO CHECK THAT THEIR APPLICATIONS ARE JAVA  
 2 COMPLIANT AND SO THAT THEY COULD USE THE JAVA BRAND NAME. AND  
 3 THAT'S WHAT THAT -- THAT WAS ABOUT.  
 4 BUT, YOU KNOW, SAP ALSO LICENSES OUR OUTSIDE IN  
 5 TECHNOLOGY, WHICH IS ANOTHER PART OF -- YOU KNOW, ANOTHER  
 6 PRODUCT THAT WE HAVE. THEY PAY AN UPFRONT LICENSE UNRELATED TO  
 7 THE VOLUMES THAT THEY BUY.  
 8 MR. LANIER: OBJECTION, YOUR HONOR. I'M SORRY AND  
 9 MOVE TO STRIKE. THAT'S TESTIMONY ABOUT THE CONTENTS OF AN  
 10 AGREEMENT THAT'S NOT IN EVIDENCE. VIOLATES THE BEST EVIDENCE  
 11 RULE AND IT'S HEARSAY.  
 12 THE COURT: I THINK HE'S RIGHT ABOUT THE LAST -- BUT  
 13 IT'S NOT THE ENTIRETY OF HER LAST ANSWER.  
 14 MS. HOUSE: WELL, I THINK, YOUR HONOR, IT WAS RAISED  
 15 BY MR. MCDERMOTT HIMSELF WHEN HE TESTIFIED THAT THEY NEVER DO  
 16 ANY UPFRONT IP LICENSES. DIRECTLY CONTRADICTS MR. MCDERMOTT'S  
 17 TESTIMONY.  
 18 THE COURT: ALL RIGHT.  
 19 CAN WE HAVE -- I CAN'T MOVE MY CURSOR UP. CAN YOU --  
 20 EITHER TELL ME HOW DO THAT -- I WANT TO HEAR THE BEGINNING OF  
 21 HER ANSWER, WHICH I THOUGHT WAS FINE.  
 22 (OFF-THE-RECORD DISCUSSION.)  
 23 THE COURT: WOULD YOU JUST READ IT. READ THE  
 24 QUESTION AND THE WHOLE THING.  
 25 (OFF-THE-RECORD DISCUSSION.)



1 (RECORD READ AS FOLLOWS:  
 2 "Q. NOW, YOU HEARD ABOUT THE JAVA LICENSE.  
 3 COULD YOU TELL ME ABOUT THAT?  
 4 "A. SURE. NOW, THE JAVA LICENSE -- I SORT  
 5 OF DON'T KNOW WHY THERE'S CONFUSION."  
 6 THE COURT: OKAY. LET'S STOP FOR A SECOND.  
 7 ALL RIGHT. ISN'T THE JAVA LICENSE THE LICENSE WE SAW  
 8 THAT MR. MITTELSTAEDT MOVED INTO EVIDENCE?  
 9 MR. LANIER: RIGHT. AND, YOUR HONOR, I WAS OBJECTING  
 10 TO HER TESTIMONY ABOUT ANOTHER AGREEMENT THAT SHE MENTIONED  
 11 AFTER THE JAVA LICENSE. THE JAVA LICENSE IS IN EVIDENCE.  
 12 THE COURT: OKAY.  
 13 MR. LANIER: IT WAS THE OTHER AGREEMENT THAT MS. CATZ  
 14 MENTIONED --  
 15 THE COURT: OKAY. ALL RIGHT.  
 16 MR. LANIER: -- WHICH IS NOT --  
 17 THE COURT: ALL RIGHT. I DON'T THINK THE SECOND ONE  
 18 IS IN.  
 19 ARE YOU PLANNING ON PUTTING IT ON?  
 20 MS. HOUSE: I'M NOT GOING TO PUT IT IN EVIDENCE.  
 21 MR. MCDERMOTT TESTIFIED THAT SAP NEVER LICENSES IP  
 22 UPFRONT, AND SO I'M ASKING MS. CATZ HER PERSONAL KNOWLEDGE ABOUT  
 23 WHETHER THAT IS TRUE OR NOT.  
 24 THE COURT: OKAY. AND YOUR OBJECTION IS...?  
 25 MR. LANIER: OBJECTION TO MS. CATZ'S PERSONAL

1 A. WELL, HE ACTUALLY WAS WRONG ON A NUMBER OF FRONTS. IT WAS  
 2 WHETHER THEY'RE INVOLVED UP -- IN LICENSE FEES UPFRONT LIKE  
 3 THAT. AND THE TRUTH IS THE OUTSIDE IN AGREEMENT IS A THREE-YEAR  
 4 AGREEMENT. IT ALLOWS THEM TO USE AS MUCH OF THE OUTSIDE IN  
 5 TECHNOLOGY AS THEY WANT. THE NUMBER DOESN'T WAIVER IN ANY WAY  
 6 FROM VOLUMES, AND IT'S -- IT'S SUCH A CLASSIC TYPE OF LICENSE  
 7 AGREEMENT. IT'S ACTUALLY CALLED A BUYOUT. AND THAT WAS  
 8 INCORRECT.  
 9 THEY ACTUALLY ON THEIR OWN SIDE, BY THE WAY, THE --  
 10 SAP THEMSELVES LICENSES SYBASE, WHICH IS ONE OF THEIR PRODUCTS,  
 11 ALSO UNLIMITED USE OVER MULTIPLE YEARS OR FOR MULTIPLE PRODUCTS  
 12 TO OTHER TECHNOLOGY COMPANIES.  
 13 SO I MEAN, THOSE WERE JUST POPPED OUT OF THE TOP OF  
 14 MY HEAD WITHOUT DOING ANY, YOU KNOW, RETHINKING. THE MOMENT HE  
 15 SAID IT, I KNEW THAT HE WAS MISTAKEN.  
 16 Q. NOW, ALSO DOES ORACLE AND DOES SAP LICENSE ITS TECHNOLOGY TO  
 17 ITS ENTERPRISE CUSTOMERS AS AN UPFRONT FASHION, OR IS IT A  
 18 RUNNING ROYALTY?  
 19 A. IN GENERAL, OUR CUSTOMERS ACTUALLY PAY US UPFRONT FOR, LET'S  
 20 SAY -- YOU KNOW, NUMBER OF YEARS, AND THEY CAN USE AS MUCH AS  
 21 THEY WANT. BUT IN GENERAL, ACTUALLY ALL OF -- MOST OF OUR  
 22 LICENSES -- I CAN'T ACTUALLY THINK OF ONE THAT ISN'T UPFRONT --  
 23 AND THEY PAY, BY THE WAY, IN GENERAL -- COMMERCIAL CUSTOMERS PAY  
 24 FOR SUPPORT UPFRONT REGARDLESS OF HOW MUCH THEY USE.  
 25 AND SOME OF THESE CUSTOMERS PAY, IN FACT, HUNDREDS OF

1 KNOWLEDGE ABOUT THAT, DON'T OBJECT TO. SHE WAS CHARACTERIZING  
 2 THE CONTENTS OF AN AGREEMENT, WHICH IS -- THAT IS WHAT I  
 3 OBJECTED TO. THAT PART THERE.  
 4 THE COURT: OKAY.  
 5 MR. LANIER: DESCRIBING THE CONTENT OF AN AGREEMENT.  
 6 MS. HOUSE: WELL, MR. MCDERMOTT WAS, TOO, WHEN HE  
 7 SAYS THAT NONE OF THEM --  
 8 THE COURT: YEAH, IF SHE CAN TESTIFY AS TO HER  
 9 PERSONAL KNOWLEDGE AS TO WHETHER OR NOT THERE WERE SUCH  
 10 LICENSES. SHE CAN CERTAINLY REFER TO A PARTICULAR AGREEMENT AND  
 11 THAT GIVES RISE TO THAT KNOWLEDGE. HOW ELSE WOULD SHE KNOW IT  
 12 UNLESS SHE WAS AWARE THAT THERE WAS SUCH AN AGREEMENT?  
 13 MR. LANIER: THE PROBLEM, YOUR HONOR, IS WITH THIS  
 14 WORD "UPFRONT," THAT'S ACTUALLY A WORD THAT NEEDS TO BE  
 15 DETERMINED IN THE CONTEXT OF EACH AGREEMENT. IS A FEE PAID  
 16 EVERY YEAR CREDITED AGAINST ROYALTIES UP FRONT?  
 17 THE COURT: OKAY. THEN YOU CAN EXPLORE THAT WITH HER  
 18 ON CROSS-EXAMINATION. OVERRULED.  
 19 BY MS. HOUSE:  
 20 Q. OH, OKAY. LET'S TRY TO CLEAN UP THIS SO IT'S NOT SO  
 21 CONFUSING. I'LL MAKE IT CLEAR.  
 22 MR. MCDERMOTT SPECIFICALLY TESTIFIED WHEN ASKED BY  
 23 HIS COUNSEL WHETHER SAP EVER LICENSES IP TO COMPETITORS UP -- IN  
 24 AN UPFRONT-PAYMENT FASHION. AND I'M ASKING YOU WHAT'S YOUR  
 25 PERSONAL KNOWLEDGE THAT TELLS YOU THAT HE'S WRONG?

1 MILLIONS UPFRONT.  
 2 Q. AND THE SAME IS TRUE FOR SAP, TO YOUR KNOWLEDGE?  
 3 A. YES.  
 4 Q. OKAY.  
 5 NOW, LET'S TALK A BIT ABOUT PROJECTIONS. YOU WERE  
 6 INVOLVED IN PREPARING PROJECTIONS AT ORACLE, AS YOU TOLD THE  
 7 JURY LAST WEEK, CORRECT?  
 8 A. YEAH. OBVIOUSLY, I'VE BEEN INVOLVED AT ORACLE FOR -- FOR  
 9 QUITE A LONG TIME AND BEFORE THAT, AS AN INVESTMENT BANKER FOR  
 10 MANY YEARS.  
 11 MS. HOUSE: COULD YOU PLEASE PUT UP ON THE SCREEN THE  
 12 SAP PROJECTION FROM PLAINTIFFS' EXHIBIT 4814. THAT'S THE  
 13 THREE-YEAR PROJECTION OF 897 MILLION.  
 14 (EXHIBIT PUBLISHED TO JURY.)  
 15 BY MS. HOUSE:  
 16 Q. OKAY. YOU'VE SEEN THAT A FEW TIMES THIS -- LAST COUPLE  
 17 WEEKS. IS THIS THE SORT OF DOCUMENT THAT ORACLE TYPICALLY  
 18 GENERATES IN DEVELOPING A BUSINESS CASE?  
 19 A. YES. SOMETHING JUST LIKE THAT, ACTUALLY.  
 20 Q. AND DO YOU RECALL TESTIMONY IN THIS CASE -- IF YOU CAN TURN  
 21 BACK TO THE FRONT PAGE OF THIS DOCUMENT.  
 22 (EXHIBIT PUBLISHED TO JURY.)  
 23 MS. HOUSE: AND THE -- PULL UP THE FIRST PARAGRAPH.  
 24 Q. DO YOU RECALL THE TESTIMONY IN THIS CASE THAT THE MEMBERS OF  
 25 THE EXECUTIVE COMMITTEE OF SAP PROVIDED EXTENSIVE INPUT AND

1 A. BUT IT ISN'T CREDITED AGAINST ROYALTIES. AND THE -- IF  
 2 YOU'RE TALKING ABOUT -- SAP AGREEMENTS, THE OUTSIDE IN AGREEMENT  
 3 IS ONE -- ONE PAYMENT FOR THREE YEARS AND YOU PAY THE WHOLE  
 4 THING UPFRONT, NOT EVERY YEAR.  
 5 Q. HOW MUCH IS IT?  
 6 A. I THINK ALSO ABOUT 1.2 MILLION, SOMETHING LIKE THAT.  
 7 Q. OKAY. WITH AN "M," RIGHT?  
 8 A. YEAH. I MEAN --  
 9 Q. OKAY.  
 10 A. -- SAP, THE ONLY PLACE THEY'VE PAID US BILLIONS IS FOR THE  
 11 DATABASE LICENSES.  
 12 Q. AND WE'LL TALK ABOUT THAT ONE IN A MINUTE.  
 13 NOW, YOU KNOW ORACLE'S HAD AN EXPERT THAT TESTIFIED  
 14 IN THIS CASE, RIGHT?  
 15 A. YES, MR. MEYER.  
 16 Q. AND HE LOOKED AT LOTS OF LICENSE AGREEMENTS FROM BOTH SIDES,  
 17 RIGHT?  
 18 A. YOU HAVE TO ASK HIM EXACTLY WHAT HE LOOKED AT.  
 19 Q. ARE YOU AWARE THAT HE PUT IN HIS REPORT THAT THERE WERE NO  
 20 COMPARABLE LICENSE AGREEMENTS TO WHAT WE'RE TALKING ABOUT HERE  
 21 AFTER LOOKING AT ALL THOSE AGREEMENTS?  
 22 A. BETWEEN US AND SAP?  
 23 Q. NONE AT ALL. BASED ON EVERYTHING HE SAW, NO COMPARABLE  
 24 LICENSE AGREEMENTS. ARE YOU AWARE OF THAT?  
 25 A. I'M ACTUALLY SURPRISED BY THAT BECAUSE I KNOW QUALCOMM

1 BEGINNING AND NEVER MAKE ANOTHER PAYMENT, RIGHT? THAT'S NOT HOW  
 2 IT ACTUALLY WORKS?  
 3 A. WELL, IT KIND OF DEPENDS, SO THEY PAY FOR THE TERM UPFRONT.  
 4 LIKE, FOR EXAMPLE, I HAVE A LOT OF CUSTOMERS WHO  
 5 BUY -- THEY'LL PAY 10 MILLION, SOMETIMES A HUNDRED MILLION,  
 6 SOMETIMES MORE, UPFRONT TO USE ALL OF OUR SOFTWARE FOR THE NEXT  
 7 THREE YEARS OR FIVE YEARS. THEY DON'T HAVE TO TELL US HOW MUCH  
 8 THEY USE OR ANYTHING. THEY PAY THE WHOLE THING FOR THE  
 9 SOFTWARE. IT'S CALLED A PERPETUAL RIGHT, WHICH MEANS FOREVER,  
 10 THEY CAN USE IT. THEY PAY IT UPFRONT NOW, AND THEN THEY ALSO  
 11 BUY ONE YEAR'S SUPPORT, AND THEY PAY THAT UPFRONT. BUT THAT'S  
 12 ALL THEY'VE COMMITTED TO.  
 13 IF THEY WANT SUPPORT ANOTHER YEAR, THEN THEY WOULD  
 14 LICENSE THAT AGAIN, AND THEY GENERALLY -- THE COMMERCIAL  
 15 CUSTOMERS PAY THAT UPFRONT.  
 16 Q. AND IN THAT SO-CALLED UPFRONT SCENARIO, YOU KNOW ACTUALLY  
 17 WHICH CUSTOMER -- IT'S ONE CUSTOMER WHO'S LICENSED TO USE IT  
 18 UNDER THE TERMS THAT'S DOCUMENTED, AND YOU KNOW EXACTLY HOW LONG  
 19 AND THAT TIME FRAME MAY HAVE LIMITS, AND YOU KNOW THE TERMS  
 20 ABOUT WHAT THEY NEED TO DO IF THEY WANT MORE MAINTENANCE.  
 21 CORRECT?  
 22 A. ARE WE TALKING ABOUT THE MAINTENANCE OR THE LICENSE?  
 23 Q. TALKING ABOUT THE ENTIRE CUSTOMER ARRANGEMENT THERE. WAS  
 24 WHAT I JUST SAID TRUE?  
 25 A. EXCEPT THE ONE THING YOU DON'T KNOW AND THE THING THAT

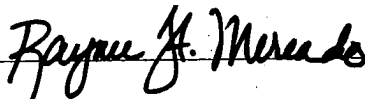
1 LICENSED, LIKE, TO SAMSUNG FOR WELL OVER A BILLION DOLLARS  
 2 TECHNOLOGY, AND THAT'S -- I MEAN, I'M NOT AN EXPERT, SO -- I  
 3 JUST REMEMBER THAT.  
 4 Q. YEAH, SO I'M JUST ASKING ABOUT THE PERSON THAT ORACLE PUT UP  
 5 HERE AND PAID TO GET ITS OPINION ON WHAT THE DAMAGES AMOUNT  
 6 SHOULD BE -- YOU'RE AWARE, AREN'T YOU, THAT HE ACTUALLY PUT IN  
 7 WRITING THAT THERE ARE NO COMPARABLE LICENSE AGREEMENTS,  
 8 CORRECT?  
 9 A. WELL, THAT'S HIS OPINION. I --  
 10 Q. OKAY.  
 11 A. QUALCOMM, I THINK, SHOWS THAT'S NOT RIGHT.  
 12 Q. OKAY.  
 13 BACK JUST TO TRYING TO DRAW SOME COMPARISONS BETWEEN  
 14 LUMP SUM THAT ORACLE'S ASKING FOR HERE AND SOME OTHER THINGS.  
 15 YOU'D AGREE -- SO WE'VE ESTABLISHED THAT IT'S  
 16 BILLIONS, NOT MILLIONS. WE'RE GOOD SO FAR?  
 17 A. OH, YEAH, ABSOLUTELY.  
 18 Q. OKAY. ONE WAS PAID -- ONE WOULD BE PAID UPFRONT, THE OTHERS  
 19 THAT YOU MENTIONED ARE PAID OVER TIME, AT LEAST THE SUN ONE IS,  
 20 CORRECT?  
 21 A. NO, THE -- OH, THE JAVA ONE, BUT NOT SAP OUTSIDE IN.  
 22 Q. OKAY. THE OTHER COMPARISON YOU DREW WAS WITH CUSTOMER  
 23 AGREEMENTS.  
 24 NOW, CUSTOMERS DON'T PAY EVERYTHING THAT THEY'RE  
 25 GOING TO PAY TO EITHER ORACLE OR SAP IN ONE LUMP SUM AT THE

1 USUALLY GENERATES A LOT OF PRICING IS HOW MUCH OF EACH PRODUCT  
 2 THEY'RE USING. SO YOU DON'T KNOW HOW MANY PROCESSORS OF  
 3 DATABASE OR HOW MANY USERS OF ERP SOFTWARE. WE DON'T KNOW, AND  
 4 WE DON'T TRACK ANY OF IT, AND THE CUSTOMER DOESN'T HAVE TO  
 5 EITHER. THAT'S WHY THEY LIKE THESE UPFRONT PAYMENTS.  
 6 Q. THAT'S RIGHT. AND SO THAT GETS TO THE QUESTION OF USE.  
 7 NOW WE HEARD A LOT, MS. CATZ, ABOUT SAP DID THIS AND  
 8 SAP DID THAT. WERE YOU -- I FORGOT WHETHER THIS WAS A FRIDAY  
 9 YOU WERE IN COURT OR NOT. WERE YOU IN THE COURT WHEN  
 10 MR. MANDIA, ORACLE'S TECHNICAL EXPERT, TESTIFIED?  
 11 A. NO, I'M SORRY.  
 12 Q. SO YOU DON'T -- DO YOU ACTUALLY KNOW YOURSELF HOW  
 13 TOMORROWNOW USED THE SOFTWARE?  
 14 A. I THINK I DO.  
 15 Q. DO YOU KNOW WHAT MR. MANDIA'S EXPRESSED OPINION WAS ON THAT?  
 16 A. I --  
 17 Q. THE EXPERT THAT ORACLE PUT UP.  
 18 A. NO, NO, I UNDERSTAND.  
 19 Q. OKAY.  
 20 A. BUT I'M SURE HE EXPRESSED A LOT OF OPINIONS. I JUST DON'T  
 21 KNOW WHICH ONE YOU'RE POINTING TO.  
 22 Q. AND DO YOU KNOW WHAT MR. MANDIA SAID ABOUT WHETHER HE FOUND  
 23 ANY EVIDENCE THAT SAP ITSELF USED THE SOFTWARE AT ISSUE HERE?  
 24 A. NO, THEIR SUBSIDIARY USED THE SOFTWARE.  
 25 Q. OKAY. AND THE LICENSE THAT WE'RE TALKING ABOUT HERE, YOU'D

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, FRIDAY, NOVEMBER 19, 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

SATURDAY, NOVEMBER 20, 2010