

# EXHIBIT 49



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:

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REPORTED BY:

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TEXT REMOVED - NOT RELEVANT

MR. BOIES: WELL, YOU'VE HEARD THESE FACTORS FROM BOTH OF THE EXPERT WITNESSES. ONE FACTOR IS SCOPE AND DURATION OF LICENSE. ANOTHER FACTOR IS EACH PARTY'S NEED FOR THE COPYRIGHTED PROPERTY. ANOTHER FACTOR IS THAT SAP'S WILLINGNESS TO ASSUME RISK OF INFRINGEMENT LIABILITY IS AN ADMISSION OF VALUE.

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8 MR. BOIES: -- I ASKED MR. BRANDT AND HE TESTIFIED TO  
9 THIS ON THE STAND HERE, THAT SAP WOULD NOT LIKELY UNDERTAKE A  
10 PROGRAM THAT HAD SERIOUS LIABILITY RISKS. NOW, THAT'S TO BE  
11 EXPECTED. BIG COMPANY -- CORPORATION DOESN'T WANT TO LIGHTLY  
12 UNDERTAKE SERIOUS LIABILITY RISK. BUT HERE, HE ADMITS EXPRESSLY  
13 THAT SAP WOULD NOT HAVE DONE THIS LIGHTLY.

14 NOW, THEY KNEW THERE WERE SERIOUS LIABILITY RISKS.  
15 WHY DID THEY TAKE IT ON? THEY TOOK IT ON BECAUSE OF THE VALUE  
16 OF THE PROGRAM. THERE'S NO OTHER EXPLANATION. BECAUSE  
17 CERTAINLY, THEY KNEW THAT TOMORROWNOW HAD PAST OPERATING ISSUES  
18 THAT MAY BE A SERIOUS LIABILITY.

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

(DEMONSTRATIVE PUBLISHED TO JURY.)

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

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

102?

(DEMONSTRATIVE PUBLISHED TO JURY.)

MR. BOIES: FIRST, LOST PROFITS DOES NOT CONSIDER THE  
RISK ASSOCIATED WITH ORACLE'S SIGNIFICANT INVESTMENTS IN  
PEOPLESOFT. SECOND, LOST PROFITS DOES NOT APPROPRIATELY MEASURE  
THE VALUE OF THE IP TAKEN, BASED ON THE EXPECTATIONS OF THE  
PARTY AT THE TIME, WHICH IS THE LEGAL STANDARD. THIRD, LOST  
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.

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