

EXHIBIT 58

**HEARING
TRANSCRIPTS**

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.)	WEDNESDAY, MAY 24, 2012
)	
SAP AG, ET AL.,)	OAKLAND, CALIFORNIA
)	
DEFENDANTS.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111-4607
BY: GEOFFREY M. HOWARD, ESQUIRE
DONN P. PICKETT, ESQUIRE
ANTHONY FALZONE, ESQUIRE

BOIES, SCHILLER & FLEXNER LLP
1999 HARRISON STREET, SUITE 900
OAKLAND, CALIFORNIA 94612
BY: STEVEN C. HOLTZMAN, ESQUIRE
FRED NORTON, ESQUIRE

FOR DEFENDANTS:

JONES DAY
1755 EMBARCADERO ROAD
PALO ALTO, CALIFORNIA 94303
BY: THARAN GREGORY LANIER,

JONES DAY
555 CALIFORNIA STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
BY: ROBERT A. MITTELSTAEDT, ESQUIRE
JASON MCDONELL, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR #4909, RPR, FCCR
OFFICIAL COURT REPORTER, USDC

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3 **TEXT REMOVED - NOT RELEVANT**
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7 **MR. HOWARD:** YOUR HONOR, IT IS RELEVANT. I AM GOING
8 TO DEAL WITH EACH OF THESE TWO CATEGORIES. FIRST IT'S RELEVANT
9 ON ITS OWN AND THEN IT ALSO COMES IN FOR IMPEACHMENT.

10 IT IS RELEVANT BECAUSE IT PROVIDES IMPORTANT
11 EVIDENCE REGARDING CAUSATION. THE FACTUAL BASIS FOR THE PLEA
12 TALKS SPECIFICALLY IN TERMS OF CAUSATION. IT SAYS WHAT
13 TOMORROWNOW IS DOING IN COPYING THE SOFTWARE. IT SAYS, AS A
14 RESULT OF THESE EFFORTS, A NUMBER OF CUSTOMERS DID SWITCH. AND
15 LANGUAGE LIKE THAT THAT IS CAUSATION LANGUAGE IS REPLETE
16 THROUGHOUT THE PLEA.

17 SO, IT IS CERTAINLY RELEVANT ON ITS OWN MERITS
18 DIRECTLY TO THE CAUSATION ISSUES THAT ARE OUR BURDEN IN THE
19 CASE AND IT'S ALSO RELEVANT FOR CONTEXT. I DISAGREE WITH
20 COUNSEL THERE BECAUSE --

21 **THE COURT:** WHEN YOU SAY "IT IS RELEVANT". ARE YOU
22 REFERRING TO THE CONVICTION OR ARE YOU REFERRING TO THE
23 ADMISSIONS IN THE PLEA AGREEMENT?

24 **MR. HOWARD:** I AM REFERRING TO THE CONVICTION AND
25 THE ADMISSIONS IN THE PLEA AGREEMENT.

1 **THE COURT:** WELL, THEY ARE DIFFERENT.

2 **MR. HOWARD:** WELL --

3 **THE COURT:** THE CONVICTION DOESN'T, IN AND OF
4 ITSELF, DOESN'T ESTABLISH THE CAUSATION. IT'S THE ACTUAL
5 ADMISSIONS MADE AT THE TIME OF THE PLEA THAT GO TO THAT EFFECT.

6 **MR. HOWARD:** YES. I THINK THEY ARE WRAPPED UP IN
7 EACH OTHER. AND THESE ARE -- THESE ARE STATEMENTS THAT WERE
8 MADE IN THE COURSE OF PLEADING GUILTY TO THE COUNTS THAT ARE
9 REFLECTED IN THE PLEA AGREEMENT.

10 THERE'S NO QUESTION THAT -- I DON'T THINK YOU CAN
11 SEPARATE THE BASIS FOR THE CONVICTION FROM THE CONVICTION
12 ITSELF. AND, IN FACT, IT MAKES IT EVEN MORE RELEVANT BECAUSE
13 OF THE -- BECAUSE THESE ARE THE BASIS FOR A CRIMINAL PLEA.

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6 I AM SIMPLY NOT GOING TO PERMIT IT. AND I DON'T
7 FIND IT'S RELEVANT TO THE QUESTION OF LIABILITY GIVEN THAT IT
8 HAS BEEN CONCEDED IN THIS CASE.

9 AND I AM CONCERNED ABOUT THE JURY BEING CONFUSED
10 WITH ALL OF THE -- THE LAST ISSUE THAT I KNOW SAP WANTS TO
11 RAISE, ALL OF THE ALLEGATIONS OF THEFT AND STEALING AND WHAT
12 HAVE YOU, I DON'T WANT THERE TO BE ANY CONFUSION IN THE JURY'S
13 MIND THAT THIS IS NOT A CRIMINAL CASE. I AM NOT -- WE ARE NOT
14 GOING TO INJECT THAT INTO THIS TRIAL. AND I DO THINK IT WOULD
15 BE UNDULY PREJUDICIAL TO SAP WHO DID NOT ENTER A PLEA OF
16 GUILTY.

17 SO THAT MOTION IS GRANTED.

18 TURNING TO THE LAST ONE, WHICH IS JUST ABOUT THE USE
19 OF THEFT AND STEALING --

20 **MR. LANIER:** THAT'S CORRECT, YOUR HONOR.

21 **THE COURT:** -- MY RULING IS THE SAME. IT'S
22 INCENDIARY, IT'S INFLAMMATORY, IT'S UNNECESSARY. YOU'VE GOT AN
23 ADMISSION HERE OF LIABILITY. YOU DON'T NEED TO CHARACTERIZE IT
24 IN A CRIMINAL CONTEXT.

25 TEXT REMOVED - NOT RELEVANT

1 THE LAST TRIAL. THIS IS NOT A PUNITIVE DAMAGES TRIAL. THIS IS
2 A COPYRIGHT INFRINGEMENT TRIAL. AND I WOULD LIKE TO KEEP IT --
3 I WOULD LIKE TO KEEP ALL OF THE INFLAMMATORY LANGUAGE OUT OF
4 THE CASE. SO THE RULING IS THE SAME.

5 THE ATTORNEYS MAY NOT USE THAT -- THOSE TERMS
6 "THEFT" AND "STEALING". YOU CAN CERTAINLY USE THE WORDS
7 "COPIED" BECAUSE THAT'S WHAT THEY DID, THEY COPIED WITHOUT
8 AUTHORITY, AND YOU CAN USE THE WORD "TAKE", BUT THAT'S AS FAR
9 AS YOU CAN GO.

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THE REASON IT IS STILL RELEVANT ACTUALLY FOLLOWS
FROM YOUR HONOR'S RULING FROM A COUPLE OF HOURS AGO ON THE
QUESTION OF WHETHER A WILLFUL INFRINGER CAN DEDUCT EXPENSES.

THE VERY CASE THAT DEFENDANTS RELIED ON TO
ARTICULATE THE RULE THAT THEY MAY DEDUCT OVERHEAD EXPENSES, IN
THE VERY CASE THAT CLARKE QUOTED FOR SOMETHING LIKE 22 LINES IN
HIS REPORT, SAYS VERY CLEARLY, THAT IF YOU ARE A WILLFUL
INFRINGER, ALTHOUGH YOU GET TO DEDUCT OVERHEAD, THERE IS EXTRA
SCRUTINY AND THE HEIGHTENED BURDEN TO SHOW THE CAUSAL

1 RELATIONSHIP THAT THE DEFENDANT IS REQUIRED TO SHOW. THAT IS
2 TO CONNECT THE EXPENSES TO THE PRODUCTION, SALE, OR
3 DISTRIBUTION OF THE INFRINGING GOODS.

4 **THE COURT:** WHAT CASE ARE YOU RELYING ON?

5 **MR. FALZONE:** THIS IS THE HAMIL VERSUS GFI CASE,
6 SECOND CIRCUIT CASE 193 F. 3D 92. I CAN READ YOU THE LANGUAGE
7 IF YOU WANT. IT SHOWS UP ON PAGE 107.

8 IT SAYS: "WHEN INFRINGEMENT IS FOUND TO BE
9 WILLFUL, THE DISTRICT COURT SHOULD GIVE EXTRA
10 SCRUTINY TO THE CATEGORIES OF OVERHEAD EXPENSES
11 CLAIMED BY THE INFRINGER TO ENSURE THAT EACH
12 CATEGORY IS DIRECTLY AND VALIDLY CONNECTED TO
13 THE SALE AND PRODUCTION OF THE INFRINGING
14 PRODUCTS. UNLESS A STRONG NEXUS IS ESTABLISHED,
15 THE COURT SHOULD NOT PERMIT A DEDUCTION FOR THE
16 OVERHEAD CATEGORY."

17 AND THAT CITES THE KAMAR CASE FROM THE NINTH CIRCUIT
18 WHICH SAYS THAT'S A FACT ISSUE FOR THE JURY.

19 SO IF WE ARE GOING TO ALLOW THEM TO DEDUCT THE
20 OVERHEAD, WE AT LEAST NEED TO FOLLOW THE CASE THAT ANNOUNCES
21 THAT RULE THAT THEY CITED TO YOUR HONOR AND MAKE SURE THE JURY
22 IS CLEAR ON THE HEIGHTENED BURDEN.

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MR. HOWARD: ARE WE GOING TO PUT SOME REASONABLE
LIMIT OR GO BY CATEGORY FOR THE WAY THIS IS GOING TO BE
PRESENTED SO THAT EACH SIDE HAS TEN EXHIBITS THAT THEY ARE
GOING TO -- IF THERE ARE THAT MANY AFTER WE GET THROUGH THE
MEET AND CONFER SO THERE'S NOT AN UNLIMITED NUMBER OF DISPUTES
THAT ARE PRESENTED TO THE COURT? TEN PER SIDE, FOR EXAMPLE.

THE COURT: WHAT I WOULD LIKE IS REPRESENTATIVE
EXHIBITS OR CATEGORIES SO I DON'T HAVE TO RULE ON EACH ONE, BUT
THAT IF THEY FALL WITHIN A CERTAIN TYPE OR HAVE CERTAIN

1 CHARACTERISTICS OR FALL WITHIN A CERTAIN SUBJECT AREA, I WOULD
2 LIKE TO BE ABLE TO MAKE A SORT OF AN UMBRELLA RULING WITH
3 REGARD TO A SET OF DOCUMENTS.

4 **MR. HOWARD:** IF WE ARE GOING TO DO IT THAT WAY, IT
5 MAY BE, YOU KNOW, THAT FIVE PER SIDE IS SUFFICIENT BECAUSE
6 THERE REALLY SHOULDN'T BE MORE THAN FIVE, TOTAL OF TEN THAT ARE
7 REPRESENTATIVE OF SOME CATEGORY THAT YOUR HONOR CAN RULE ON.

8 **THE COURT:** I WOULD TEND TO AGREE, BUT I JUST WANT
9 YOU ALL TO USE YOUR BEST JUDGMENT AND GIVE ME THE CATEGORIES
10 THAT ARE THE MOST IMPORTANT HERE.

11 I ACTUALLY EXPECT YOU ALL TO WORK OUT MOST OF THE
12 ONES THAT ARE NOT SO IMPORTANT.

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THE COURT: I ACTUALLY WOULD PREFER THAT YOU MEET AND CONFER IN ADVANCE OF ANYTHING.

NOW, ARE WE TALKING ABOUT EVIDENTIARY OBJECTIONS BESIDES THE ONES IDENTIFIED IN YOUR TRIAL BRIEF HAVING TO DO WITH CUSTOMER ISSUES?

WHAT ARE THE OTHER KIND OF EVIDENTIARY ISSUES THAT WE NEED TO RESOLVE BEFORE TRIAL? ASIDE FROM THE DEPOSITION DESIGNATION AND OBJECTIONS, WHICH I CAN DO ON MY OWN WITH YOUR JOINT SUBMISSION, WHAT ELSE ARE WE GOING TO DO AT THIS MEETING WE'RE GOING TO HAVE ON THE 8TH?

MR. LANIER: THOSE ISSUES THAT WERE RAISED IN OUR MOTION IN LIMINE NUMBER TWO THAT YOUR HONOR DEFERRED. THAT, I THINK, WOULD BE TWO CORE CATEGORIES, THE CUSTOMER-RELATED ISSUES THAT WE DISCUSSED IN THE TRIAL BRIEF, AND THE ISSUES RELATING TO WHAT EVIDENCE IS RELATING TO HYPOTHETICAL LICENSE AS OPPOSED TO OTHER THINGS, AS WE SET FORTH IN OUR MOTION IN LIMINE NUMBER TWO.

THE COURT: THOSE ARE THE TWO CATEGORIES --

MR. LANIER: BROADLY SPEAKING, YES.

THE COURT: HOW ABOUT YOU?

MR. HOWARD: WELL, I THINK TO SOME EXTENT ONE OF OURS WOULD OVERLAP BECAUSE WE OBVIOUSLY THINK THAT THE EVIDENCE

1 THAT HAS BEEN IDENTIFIED IN THEIR MOTION IN LIMINE NUMBER TWO
2 SHOULD COME IN. AND I THINK PROBABLY THE OTHER CATEGORY
3 OBVIOUSLY OVERLAPS, TOO.
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CERTIFICATE OF REPORTER

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C-07-1658 PJH, ORACLE USA, INC., ET AL., VERSUS SAP AG, ET AL., PAGES NUMBERED 1 THROUGH 129, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, 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.

/S/ DIANE E. SKILLMAN

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR