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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 ORACLE USA, INC., a Colorado corporation,
 20 *et al.*,

21 Plaintiffs,

22 v.

23 SAP AG, a German corporation, *et al.*,

24 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER ENTERING
 FINAL JUDGMENT AGAINST
 PLAINTIFFS OSC AND JDEE OR
 CERTIFYING DISMISSAL ORDER
 FOR INTERLOCUTORY APPEAL**

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1 On December 15, 2008, the Court dismissed without leave to amend the copyright
2 infringement claims asserted by plaintiffs Oracle Systems Corporation (“OSC”) and J.D.
3 Edwards Europe (“JDEE”) for lack of subject matter jurisdiction. Specifically, the Court
4 dismissed OSC for lack of standing under 17 U.S.C. § 501(b), and it dismissed JDEE on the
5 ground the infringement claims it asserted were strictly extraterritorial.

6 Pursuant to Federal Rule of Civil Procedure 54(b), the Court hereby directs entry
7 of final judgment as to both OSC and JDEE. The Court’s dismissal order is a final order as to
8 these parties because it dismisses their only claims for relief, and ends the litigation for each of
9 them. The jurisdictional issues underlying the dismissal of OSC and JDEE are distinct and
10 severable from the merits of their infringement claims and the claims of the remaining plaintiffs,
11 and turn primarily on questions of law. Insofar as OSC and JDEE might be reinstated as
12 plaintiffs upon a successful appeal of the jurisdictional issues, it would be far more efficient to
13 have them reinstated prior to the resolution of the remaining claims so all claims could be tried
14 together. If, on the other hand, the claims asserted by OSC and JDEE were reinstated after the
15 resolution of the remaining claims, it would require the Court, the parties and any trier of fact to
16 essentially start this complex case all over again. Moreover, the claims asserted by OSC and
17 JDEE relate to an alleged ongoing pattern of infringement by defendants, and it would be most
18 efficient to adjudicate all infringement claims together, insofar as the Court has jurisdiction over
19 them. Accordingly, the Court finds there is no just reason for delaying the appeal of this Court’s
20 order dismissing OSC and JDEE.

21 In the alternative, the Court finds its dismissal order appropriate for certification
22 as an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The order presents controlling issues
23 of law as to both OSC and JDEE because it ends the litigation for each of them. There are
24 substantial grounds for difference of opinion concerning the dismissal of each party, because this
25 Court’s order presents at least an implied conflict with other courts’ decisions on the underlying
26 jurisdictional issues, and also presents matters of first impression. As explained above, an
27 immediate appeal of the Court’s dismissal order will advance the ultimate termination of this
28 litigation by avoiding the potential inefficiency that would result if the claims of OSC and JDEE

1 are reinstated years from now, following the adjudication of the claims remaining before this
2 Court.

3 SO ORDERED.

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5 DATED: _____, 2009

Hon. Phyllis J. Hamilton
United States District Court Judge

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