

EXHIBIT D

United States District Court

Northern District of California

Before The Honorable Elizabeth D. Laporte

Oracle Corporation, et al.)
)
 Plaintiff,)
)
 vs.)
)
 SAP AG, et al.,)
)
 Defendant.)
 _____)

No. C07-1658 PJH (EDL)

COPY

San Francisco, California
Wednesday, May 27, 2009

Reporter's Transcript Of Proceedings

Appearances:

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 By: **Elaine Wallace, Esquire**
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Reported By: **Sahar McVickar, RPR, CSR No. 12963**
Official Reporter, U.S. District Court
For the Northern District of California

(Computerized Transcription By Eclipse)

1 was glossed over, but you seem to be saying, well, most of it's
2 only -- it's going to be module, so it's no big problem for
3 them.

4 And they're saying they did give you the modules, so
5 what else is it and how burdensome is it? And if looking for
6 fragments, that may be going too far.

7 **MS. WALLACE:** Well, there are really two separate
8 issues. The identification of the modules in Interrogatory No.
9 13, in the response to Interrogatory No. 13, that identifies
10 the modules contained in each asserted registered work. That
11 does not tell us what were the underlying modules that were
12 incorporated into each of the registered works.

13 So what we are looking for is an identification of
14 the new material and the old material. There is no way that
15 that appears in a list of modules. We don't know -- if I look
16 at the list of modules for one asserted work, I can't tell, is
17 this a module that came from a preexisting version that is not
18 asserted in the case or is this a new module. I have no way of
19 telling that just from seeing a list of modules contained in a
20 particular work.

21 And one thing I would like to correct about a
22 statement that Oracle's counsel has made, what we have are
23 copies of the software that's actually asserted in the case,
24 the registered works, we don't have copies of preexisting works
25 that are not asserted in the case. And Oracle has indicated

1 that it may want to add 63 additional registrations for
2 preexisting works; our view is --

3 **THE COURT:** Well, I mean --

4 **MS. WALLACE:** -- it's way too late for that.

5 **THE COURT:** That's up to the trial judge but I think
6 it's way too late.

7 And I thought that was a red herring, too, that
8 somehow you get this discovery, that means that you have to add
9 them to the complaint, again, I think that's confusing the Zoom
10 situation with this one. I don't think they are the same.

11 **MS. WALLACE:** So because we don't have the
12 underlying software, we have no way of comparing the asserted
13 works with the underlying works, which may or may not be
14 asserted. We have no way of knowing even what the underlying
15 works are because the registrations don't provide that
16 information. The registrations are, in fact, inconsistent --

17 **THE COURT:** Well, I saw you found a mistake,
18 seemingly, in one of the responses.

19 **MS. WALLACE:** Well, they are actually inconsistent
20 in a broader way: Most of the registrations indicate that
21 there are preexisting works but they are unregistered; that is
22 inconsistent with the position that Oracle has taken in its
23 interrogatory response and also that the Oracle's Counsel has
24 taken in the meet and confer.

25 Oracle's counsel has said each registered work