

# **EXHIBIT H**

**From:** Jindal, Nitin  
**Sent:** Friday, October 16, 2009 5:18 PM  
**To:** 'Jason McDonell'  
**Cc:** Hann, Bree; 'Elaine Wallace'; Howard, Geoff; House, Holly; 'jfroyd@JonesDay.com'; 'jlfuchs@JonesDay.com'; swcowan@JonesDay.com; Alinder, Zachary J.; Jacqueline K. S. Lee  
**Subject:** RE: Production of R&D Information

Jason,

Thank you for your response. While we appreciate that progress is being made here, there are several issues that still may warrant a motion to compel on Tuesday if a resolution cannot be reached on Monday. We are available for a meet and confer call on Monday if that will facilitate the process.

We can not agree to accept trial balance reports without detailed income statement and balance sheet reports as well. You will recall that Defendants made requests for both in addition to requests for trial balance information from Oracle, which Oracle has provided to Defendants. Further, naked trial balance information will not show us how SAP organizes the various accounts in its income statement and balance sheet reports. To be clear, Oracle is requesting from Defendants the same level of detail than Oracle itself provided to Defendants: namely, the most detailed income statement and balance sheet reports that SAP is able to produce for the two Defendant entities. Please advise whether Defendants will provide reciprocal information and when.

Also, during our telephonic meet and confer last week, we informed you that we would be seeking infringer's profits for the application sales revenues associated with the "List of 83" customers. This is certainly enough information to determine which cost data you might apply to our showing of revenues. We simply request that you produce all of that information now. This request is not related to Oracle's production of financial information, and Defendants' request for non-Plaintiff entity information, which Defendants have not shown to be relevant. Please confirm that you are refusing to produce SAP cost information you may use to rebut Oracle's damages claim.

As for your proposal regarding R&D, we accept your offer provided that Defendants produce the expenses and headcount information with the greatest level of detail available. Oracle will produce corresponding information by November 3rd, again with the greatest level of detail reasonably available.

Finally, we still await your response regarding our request for SAP licensing information, in response to Amy Donnelly's email from earlier today. This also pertains to our motion to compel for next week.

We look forward to your position on those issues shortly.

Best Regards,

Nitin

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**From:** Jason McDonell [mailto:jmcdonell@JonesDay.com]  
**Sent:** Friday, October 16, 2009 4:04 PM  
**Cc:** Hann, Bree; 'Elaine Wallace'; Howard, Geoff; House, Holly; 'jfroyd@JonesDay.com'; 'jlfuchs@JonesDay.com'; swcowan@JonesDay.com; Alinder, Zachary J.; Jacqueline K. S. Lee  
**Subject:** RE: Production of R&D Information

Amy and Nitin,

This responds to your emails below. We agree that we should be able to work out these issues without a motion.

As to all of these issues, Defendants reserve all of their arguments and objections and offer the following as a potential resolution of the issues you raise below. I do repeat for the record, however, that Plaintiffs have only recently made the specific demands discussed below and we are diligently responding. I also note that we have not seen any specific claim for infringer's profits damages from Plaintiffs and we therefore do not know exactly what claim Plaintiffs will ultimately make through their expert. Nevertheless, please consider the following:

#### R&D Information

Based upon a reasonable search, we believe we can produce additional reports containing information about SAP's R&D expenses and R&D headcount for the period January 1, 2004 through October 31, 2008. Those expenses and headcount numbers are not, however, broken down by "applications and support" as you request, because SAP does not track the information in that manner. Nor does SAP track its R&D expenses and headcount by product line. We are trying to complete our investigation of this issue, but I am cautiously optimistic that we will be producing this information next week, but in all events before November 3. As to TomorrowNow, we believe our productions to date, including without limitation the production of the general ledgers and Quick Books information have given you all the TN expense information you seek.

#### Financial Statements

As previously discussed, we are working on collecting additional financial information for the Defendant entities. We are collecting quarterly trial balance information that I understand is comparable to the trial balance information that Plaintiffs have produced. As I understand it, once you have the trial balance information, you will have all the detail you will need to run balance sheets and income statements in any level of detail that you would like, so we do not plan to run separate balance sheets and income statements (and doing so may only slow up the process).

As I understand it, you are also requesting financial information for all entities that may have incurred expenses that Defendants may consider in defending against any claim Plaintiffs may make for "infringer's profits" damages. Here again, we do not know the specifics of Plaintiffs infringer's profits claims. In any case, please note, that when we requested financial information for all Oracle entities that Plaintiffs may contend lost profits as a result of Defendants' alleged actions, you were only willing to agree to produce for the plaintiff entities and 3 sample country entities. My question with respect to this request is, if Defendants produce trial balance information for entities beyond the plaintiff entities and 3 sample countries, are Plaintiffs willing to provide additional trial balances for other entities as well?

Thank you.

Jason McDonell, Esq.  
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From: "Donnelly, Amy" <amy.donnelly@bingham.com>  
 To: "Donnelly, Amy" <amy.donnelly@bingham.com>, "jmcdonell@JonesDay.com" <jmcdonell@JonesDay.com>, "Elaine Wallace" <ewallace@JonesDay.com>, "jfroyd@JonesDay.com" <jfroyd@JonesDay.com>, "jfuchs@JonesDay.com" <jfuchs@JonesDay.com>, "swcowan@JonesDay.com" <swcowan@JonesDay.com>  
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Date: 10/16/2009 10:34 AM  
Subject: RE: Production of R&D Information

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Counsel,

We are still awaiting a response to my email below pertaining to the mutual exchange of R&D data. We are also waiting on your response to Nitin Jindal's email (attached) re SAP financial information. We believe it is in both parties' interest to reach a resolution on these outstanding issues, which are currently scheduled to be addressed in a motion to compel to be filed on Tuesday.

Please advise us of Defendants' position in response to these emails by close of business today, or at a minimum when a response can be expected.

Regards,  
Amy

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**From:** Donnelly, Amy  
**Sent:** Monday, October 12, 2009 7:24 PM  
**To:** Donnelly, Amy; 'jmcdonell@JonesDay.com'; 'Elaine Wallace'; 'jfroyd@JonesDay.com'; 'jlfuchs@JonesDay.com'; 'swcowan@JonesDay.com'  
**Cc:** Howard, Geoff; House, Holly; Hann, Bree; Alinder, Zachary J.  
**Subject:** RE: Production of R&D Information

Counsel,

Please note that there was a typo in the dates included in my previous email. Our request is corrected below.

Apologies for the inconvenience.

Regards,  
Amy

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**From:** Donnelly, Amy  
**Sent:** Monday, October 12, 2009 3:02 PM  
**To:** 'jmcdonell@JonesDay.com'; 'Elaine Wallace'; 'jfroyd@JonesDay.com'; 'jlfuchs@JonesDay.com'; 'swcowan@JonesDay.com'  
**Cc:** Howard, Geoff; House, Holly; Hann, Bree; Alinder, Zachary J.  
**Subject:** Production of R&D Information

Counsel,

As discussed in our meet and confer call last week, Plaintiffs have reviewed and tailored the request for production of certain R&D data from Defendants. Specifically, Plaintiffs intend to move to compel production of the following information:

1. Documents sufficient to show R&D expenses for SAP applications and support and TN support broken out (a) by product line to the extent available and (b) by function with the greatest detail available (e.g. sustaining/maintenance R&D versus new development R&D or any more specific delineation where available), plus accompanying explanatory presentations and analyses, for the time period from January 1, 2004 to October

31, 2008.

2. Documents sufficient to show R&D employee headcount for SAP applications and support and TN support broken out (a) by product line to the extent available and (b) by function with the greatest detail available (e.g. sustaining/maintenance R&D versus new development R&D or any more specific delineation where available), plus accompanying explanatory presentations and analyses, for the time period from January 1, 2004 to October 31, 2008.

Also pursuant to Defendants' request, Plaintiffs are currently reviewing the Oracle productions to identify documents that fit these specific categories of documents for Oracle applications and support. Plaintiffs will agree to supplement the existing production where needed to the extent available for the time period from the PSFT acquisition (January 1, 2005) to October 31, 2008.

Please advise whether Defendants agree to a mutual exchange of this information by November 3rd, 2009. To the extent the parties rely on documents in their existing document productions for this mutual exchange, each party must identify by bates number the documents which provide this information.

In return for Defendants' assurances of a mutual exchange of this data by November 3rd, 2009, Oracle will not move to compel this data in its October 20, 2009 motion to compel. Oracle does, however, reserve the right to seek leave to incorporate this request into its subsequent motion to compel to the extent Defendants fail to meet any obligations agreed to through this meet and confer process.

Regards,

Amy

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----- Message from "Jindal, Nitin" <nitin.jindal@bingham.com> on Mon, 12 Oct 2009 09:58:24 -0700 -----

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SAP Financial Information : Subject

,Jason

During our telephonic meet and confer last Thursday, you indicated Defendants might soon be producing certain SAP trial balance, income statement, and balance sheet information. Of course, Oracle cannot agree to withdraw its request for cost information from its impending Motion to Compel until it has reviewed that information. In addition, however, Oracle requests that Defendants confirm that the production includes the most detailed income statement and balance sheet reports that SAP is able to produce. As Defendants are aware, Oracle's income statement and balance sheet reports were the most detailed available from Oracle's reporting systems. Finally, Oracle requests that Defendants confirm that they will not apply other unproduced cost or financial information against Oracle's showing of infringers' revenues. If Defendants intend to use other unproduced information, Oracle will require immediate production of that information as well.

,Best Regards

Nitin

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