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19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE USA, INC., et al.,   Case No. 07-CV-1658 PJH (EDL)

23   Plaintiffs,   **DEFENDANTS' OPPOSITION TO
                                              PLAINTIFFS' MOTION TO
24   v.   COMPEL PRODUCTION OF
                                              DOCUMENTS RELATED TO
25 SAP AG, et al.,   DAMAGES MODEL AND
                                              INTERROGATORY RESPONSES
26   Defendants.   RELATED TO USE OF PLAINTIFFS'
                                              INTELLECTUAL PROPERTY**
27
                                              DISCOVERY MATTER
28

1 Defendants' Opposition to Plaintiffs' Motion to Compel Production of Documents Related to

2 Damages Model ("Fuchs Decl."), ¶ 2. Defendants have incurred enormous expense and related

3 burdens associated with responding to Oracle's discovery requests. *See id.* at ¶¶ 3-7. Specifically,

4 and not even counting the substantial expense Defendants incurred responding to Oracle's written

5 discovery and preparing for and defending over 300 hours of depositions in this case, Defendants

6 are on track to spend in excess of $14 million producing custodians' data, TN's databases and

7 dozens of TN servers via the Data Warehouse facility.[6] Oracle could have propounded focused,

8 targeted discovery, considerate of the responsive burdens created by such requests. Instead,

9 Oracle adopted a shot-gun/trot-line discovery strategy, which strategy logically results in the

10 production of enormous volumes of documents and data. Defendants have produced the

11 enormous volume of discovery requested by Oracle, and it is now time that Oracle accept the

12 burden that comes with the discovery approach it has taken in this case.

13   **A.**   **TN Properly Responded to Interrogatory 13.**

14   Oracle mischaracterizes the information requested in Interrogatory 13. A careful reading

15 of the interrogatory and Defendants' response demonstrates that Defendants completely answered

16 it.

17   **1.**   **<u>Oracle's Actual Request.</u>**

18   Oracle's Interrogatory 13 to TN reads as follows:

19   Describe in as much detail as possible all Software and Support Materials that
20   'have been downloaded beyond those that, according to TN's records, related to
      applications licensed to the particular customer on whose behalf the downloads
      were made,' ***as alleged in ¶ 15 of Your Answer***, including but not limited to
21   Identifying the 'records' You referenced in making Your determination.

22 Howard Decl., Ex. A (emphasis added).[7] Oracle now asserts that Interrogatory 13 seeks more

23 than just a description of the downloads to which Defendants referred in Defendants' Answer to

24 Plaintiffs' First Amended Complaint, at ¶ 15 ("Answer to FAC").[8] For example, the Motion

25   [6] *See* Fuchs Decl., ¶ 7.

26   [7] It is worth noting that Oracle did not raise Defendants' response to Interrogatory 13 as
one of the nineteen responses that were allegedly objectionable in its first Motion to Compel
27 hearing before Judge Legge on February 13, 2008.

28   [8] The plaintiffs named in the First Amended Complaint included now former plaintiff
Oracle Corporation and current plaintiffs Oracle International Corporation and Oracle USA, Inc.

1   states that Interrogatory 13 also calls for information on "how [TN] got its downloads . . . and

2   how it used them to support specific customers," the identity of those materials that "were

3   downloaded using credentials of a customer not entitled to those materials"[9] and "which materials

4   [TN] improperly downloaded from Customer Connection." Motion at 13, 16. That information

5   was not requested in Interrogatory 13. Instead, variations of those requests are contained in other

6   interrogatories that Oracle has propounded on Defendants and that Defendants have answered in

7   detail.[10]

8   **2.   Defendants Gave a Specific, Narrative Response to Interrogatory 13.**

9   Defendants appropriately responded to Interrogatory 13 by identifying the information

10   used and citing the specific records relied upon to make the statement in paragraph 15 of the

11   Answer to FAC. Specifically, Defendants responded in part:

12   [TN]'s downloads on behalf of customers using JDE's OneWorld products were
        made based on instructions set forth on a Download Request Form. The
13   Download Request Forms for Merck, OCE, SPX, Metro Machine and Yakazi
        instructed the download team to download all ESUs for all system codes on a
14   particular release level. [TN]'s records did not show that those customers had
        represented that they were licensed to all system codes on a particular release
15   level.

16   TN's Response to Oracle Corporation's First Set of Interrogatories to TN, No. 13 (Howard Decl.,

17   Ex. C).

18   **3.   Defendants Properly Relied on Rule 33(d).**

19   In addition to providing a specific, narrative response to Interrogatory 13, Defendants

20   further responded by referencing, under Rule 33(d), the customer contracts, onboarding

21   documentation and downloaded materials that they relied upon in drafting paragraph 15 of the

22   [9] Plaintiffs attempt to frame the issue as relating to which customers' Customer
Connection password was used to download specific materials; however, Interrogatory 13 does
23   not ask for this information. *Compare* Interrogatory 13, Howard Decl., Ex. C, *with* Interrogatory
10, Fuchs Decl., ¶ 17, Ex. E (Interrogatory 10 of Oracle Corp.'s First Set of Interrogatories to
24   TN). Moreover, Plaintiffs are well aware that TN's typical procedure was to download materials
for a customer using that customer's Customer Connection ID and password and to store those
25   downloads in a customer-specific folder. *See, e.g., id.* (Defendant TN's Fourth Amended and
Supplemental Response to Plaintiff Oracle Corp.'s First Set of Interrogatories to TN, No. 3, 12).
26   Plaintiffs have had access to all of the download folders on TN's systems, and Defendants have
always acknowledged that there is no known technical way to specifically tie a downloaded item
27   on TN's systems to a Customer Connection ID and password.

28   [10] *See* part III.A.4. below for a description of the information provided to Oracle in
response to these other interrogatories.