EXHIBIT I

ORACLE USA, INC., ET AL

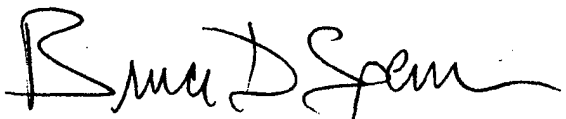
v.

SAP AG, ET AL

CASE No. 07-CV-01658

EXPERT REPORT OF BRUCE D. SPENCER

MARCH 17, 2010



BRUCE D. SPENCER, Ph.D.

Subject to Protective Order
Confidential Information

> "Measures 128, 129, 131 and 132 are reported with a 90% confidence interval [in the tables]. Measure 131 shows that in instances in which customers received a first deliverable Retrofit Fix, 83.92% of the First Deliverables were contaminated based on Object analysis. This same measure for the Critical Support Fix population is 99.12%."[80]

These are misleading statements about percentages. Dr. Levy offers them as unconditional truth, but in fact he is ignoring sampling error and he is ignoring any potential for measurement error by Mandiant. The fact that his percentages are based on a sample, which is subject to sampling error, implies that he is almost surely incorrect to some extent in his claims. That is, the percentages he estimates to be 89.75% and 93.72% are not exactly as he estimates – there will be some error in his estimates.

8.2. In other places Dr. Levy is more conscientious about saying that his numbers are estimates based on a sample. But, he still does not make allowance for sampling error. In many cases he offers the confidence interval in a footnote, and although the width of Dr. Levy's confidence interval represents an allowance for sampling error, the widths of those intervals do not affect what he reports as his definitive estimates or opinions. Thus, Dr. Levy's estimates and opinions do not take sampling error into account. His estimates and opinions are for the most part the midpoints of his confidence intervals.[81]

8.3. The decision to sample and how to sample was made unilaterally by Plaintiffs. I am informed by Defendants' counsel that Plaintiffs have the ultimate burden of proof on their claims in this case. Because the burden of proof is on the Plaintiffs, and Plaintiffs decided to introduce sampling error, Dr. Levy should construct his estimates so that Defendants are not penalized by Plaintiffs' decision to introduce sampling error. As

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[80] Levy-R2, 33.

[81] For most measures his estimates equal the midpoints of his confidence intervals. The exceptions are the measures whose confidence intervals he constructs using bootstrap methods.