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21 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 22 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

No. 07-CV-01658 PJH (EDL)

**DECLARATION OF JOHN A. POLITO IN
 SUPPORT OF MOTION PURSUANT TO 17 U.S.C.
 § 410(c) THAT EVIDENTIARY PRESUMPTION
 APPLY TO SIX COPYRIGHT REGISTRATIONS
 [EXHIBITS A-D AND F-H FILED UNDER SEAL]**

Date: September 29, 2010
 Time: 9:00 a.m.
 Place: 3rd Floor, Courtroom 3
 Judge: Hon. Phyllis J. Hamilton

Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF JOHN POLITO IN SUPPORT OF MOTION PURSUANT TO 17 U.S.C. § 410(c) THAT
 EVIDENTIARY PRESUMPTION APPLY TO SIX COPYRIGHT REGISTRATIONS

1 I, John A. Polito, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and before this
3 Court, and an associate at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle
4 International Corporation, Oracle USA, Inc. (predecessor to Oracle America, Inc.), Oracle
5 EMEA Ltd., and Siebel Systems, Inc. (collectively, “Oracle” or “Plaintiffs”). I have personal
6 knowledge of the facts stated below by virtue of my representation of Oracle in this action, and if
7 called as a witness could competently testify as to them. I make this declaration in support of
8 Oracle’s Motion Pursuant to 17 U.S.C. § 410(c).

9 2. For ease of use and reference and to the extent possible without losing context, for
10 all exhibits attached to this Declaration, only the relevant pages and information have been
11 provided. Unless otherwise noted below for a particular document, we have provided all
12 highlighting and/or circling in these Exhibits to further assist in identifying the information
13 relevant to Oracle’s Motion Pursuant to 17 U.S.C. § 410(c).

14 3. Attached as **Exhibit A** is a true and correct copy of the first page from the deposit
15 materials for the following six copyright registrations, in sequence: (1) Plaintiffs’ Trial Exhibit
16 884, TX 6-541-029, Initial release of JD Edwards World A7.3; (2) Plaintiffs’ Trial Exhibit 885,
17 TX 6-541-047, Initial release of JD Edwards World A8.1; (3) Plaintiffs’ Trial Exhibit 886, TX 6-
18 541-033, Initial release of JD Edwards EnterpriseOne XE; (4) Plaintiffs’ Trial Exhibit 881, TX
19 6-941-989, Siebel 6.3 Initial Release and Documentation; (5) Plaintiffs’ Trial Exhibit 882, TX 6-
20 941-988, Siebel 7.0.5 Initial Release and Documentation; and (6) Plaintiffs’ Trial Exhibit 883,
21 TX 6-941-990, Siebel 7.5.2 Initial Release and Documentation.

22 4. Each page of Exhibit A contains a statement of copyright ownership in the form
23 “Copyright (c)” followed by the date and the name of the owner. A box has been drawn around
24 the statements of ownership for convenience. The named owners are: J.D. Edwards & Co., for
25 (1) and (2); J.D. Edwards World Source Co., for (3); and, Siebel Systems, Inc., for (4), (5) and
26 (6).

27 5. Attached as **Exhibit B** is a true and correct copy of pages 1-19, 25-26, and 31 of
28 Trial Exhibit 1806, a document titled “A Step Ahead: A7.3 Release Notes,” dated May 1996.

1 6. Attached as **Exhibit C** is a true and correct copy of pages 1-22 of the file
2 EAP7.pdf, found on Oracle’s production disc ORCL099 (Bates No. ORCL00400059). Exhibit C
3 is titled “JD Edwards World, Programmer’s Guide, Version A7.3 to 9.1,” dated August 8, 2007.

4 7. Attached as **Exhibit D** is a true and correct copy of ORCL00255051, titled
5 “Release Notes for J.D. Edwards EnterpriseOne 8.12.”

6 8. Attached as **Exhibit E** is a true and correct copy of pages 107-109 of Plaintiffs’
7 Amended Trial Exhibit List, Dkt. 761, redacted to show only Plaintiffs’ Trial Exhibits 1796-
8 1834. These 39 trial exhibits are copies of JD Edwards documentation and release notes. The
9 earliest entry by date, Plaintiffs’ Trial Exhibit 1816, titled “The Rolling Letter First Issue,” is
10 dated February 15, 1989, and includes a discussion of J.D. Edwards World A2.2. Several entries
11 date from September 2000, concurrent with the release of J.D. Edwards EnterpriseOne XE. *See*,
12 *e.g.*, Plaintiffs’ Trial Exhibit 1796, dated September 2000 and titled “Net Change for Distribution
13 from PeopleSoft EnterpriseOne B73.3.1 to Xe.”

14 9. Attached as **Exhibit F** is a true and correct copy of an excerpt of
15 ORCL00602083, a spreadsheet listing the dates, descriptions and resources associated with
16 Service Action Requests (SARs) for J.D. Edwards from 1991 to 2000. Exhibit F contains entries
17 for up to 10 SARs for each year, by Date Opened. The complete spreadsheet contains entries for
18 over 49,000 SARs.

19 10. Attached as **Exhibit G** is an excerpt, beginning on page 2036, of Plaintiffs’ Trial
20 Exhibit 2128, titled “Siebel eBusiness Applications, Siebel Release Notes, Siebel 2000, Version
21 6.3.” Internal page numbers for this excerpt are iii to vii, 1-1 to 1-5 and 4-57 to 4-58.

22 11. Attached as **Exhibit H** is a true and correct copy of pages 1-15 and 32-33 from
23 ORCL00526435, titled “Siebel Maintenance Release Guide, Version 8.0.0.x, Rev K,” and dated
24 June 2009.

25 12. I directed, supervised the preparation of and performed quality control upon the
26 document entitled “FRE 1006 Summary - Selected Siebel Documentation and Release Notes”
27 (“Siebel Summary”), a true and correct copy of which is attached here as **Exhibit I**. The Siebel
28 Summary describes 208 release notes and other product documentation for Siebel software. The

1 earliest entry by date and by version is titled “Siebel Enterprise Applications, Release Notes,
2 Siebel 98, Version 4.0.1,” version 4.0.1, dated March 1998. The latest entry by date and by
3 version is titled “Siebel CRM Fix Pack Guide,” version 7.5.3.17, dated October 2007.

4 13. The source documents for the Siebel Summary are: (a) Plaintiffs’ Trial Exhibit
5 2127, a document titled “HTML documentation for Siebel 7.5.2 - Selected Files” that is 739
6 pages in length; (b) Plaintiffs’ Trial Exhibit 2128, a document titled “Release notes for Siebel
7 4.0.1 through 7.0.4 - Selected Files” that is 2151 pages in length; and, (c) Plaintiffs’ Trial Exhibit
8 2129, a document titled “Patch and maintenance release guides for Siebel 4.0.2.54 through
9 7.5.3 - Selected Files” that is 919 pages in length. These three documents have been produced to
10 Defendants as trial exhibits. All of these documents, in turn, were created from the files
11 comprising the Database of Documentary Customer Support Materials for Siebel Software,
12 produced as ORCL206 (Bates No. ORCL00527756).

13 14. As the documents described in ¶ 13, above, are too voluminous to be conveniently
14 examined by the Court, I directed and supervised preparation of the Siebel Summary for the
15 convenience of the Court. Plaintiffs will provide the documents upon which the Siebel Summary
16 is based, should the Court or Defendants so request. The parties have stipulated that attorneys
17 may prepare evidentiary summaries pursuant to Fed. R. Evid. 1006.

18 15. Each of the trial exhibits summarized by the Siebel Summary comprises a series
19 of files, separated by slipsheets. At my direction, three lists were assembled: each contained the
20 page number and title of every document (excluding slipsheets and, for Plaintiffs’ Trial Exhibit
21 2127, excluding documents appearing to consist solely of a title together with links to other
22 documents) within Plaintiffs’ Trial Exhibits 2127, 2128 and 2129. For Plaintiffs’ Trial Exhibit
23 2127, I directed that the version number “7.5.2” be recorded for each list entry, based on the title
24 of the exhibit. For Plaintiffs’ Trial Exhibits 2128 and 2129, I directed that the version number or
25 numbers and the publication date be recorded for each list entry, to the extent this information
26 was readily apparent on the first page or pages of each document. I combined these three lists
27 and sorted by version, then by date within version, and then by title within date to create the
28 Siebel Summary.

1 16. Oracle has produced copies of software embodying each of the 111 registered
2 works in suit, together with all reasonably available documentation and release notes.

3 17. The 19 copyrights in suit for modules of J.D. Edwards World A6.1 listed below
4 were registered as unpublished works:

5

6	Registration Number	Registration Date	Title of the work
7	Accounts Payable program	March 7, 1995	TXu 619-320
8	Accounts Receivable program	March 7, 1995	TXu 619-312
9	Capacity Requirements Planning program	March 7, 1995	TXu 619-307
10	Configuration Management program	March 7, 1995	TXu 619-305
11	EDI Interface (6) program	March 7, 1995	TXu 619-304
12	Enterprise Facility Planning program	March 7, 1995	TXu 619-311
13	Equipment Management (5) program	March 7, 1995	TXu 619-309
14	Financial Modeling, Budgeting & Allocations program	March 7, 1995	TXu 619-321
15	Financial Reporting (FASTR) program	March 7, 1995	TXu 619-318
16	General Ledger & Basic Financial program	March 7, 1995	TXu 619-310
17	Inventory Management program	March 7, 1995	TXu 619-314
18	Master Production Scheduling program	March 7, 1995	TXu 619-306
19	Product Data Management program	March 7, 1995	TXu 619-317
20	Purchase Order Processing program	March 7, 1995	TXu 619-316
21	Sales Order Processing/Sales Analysis program	March 7, 1995	TXu 619-315
22	Shop Floor Control program	March 7, 1995	TXu 619-303
23	Warehouse Management program	March 7, 1995	TXu 619-313
24	WorldCASE Development Environment program	March 7, 1995	TXu 619-308
25	WorldCASE Foundation Environment (3) program	March 7, 1995	TXu 619-319
26			
27			
28			

1 18. One J.D. Edwards copyright in suit, TXu1-607-455, Database of Documentary
2 Customer Support Materials for J.D. Edwards Software, was registered as an unpublished work
3 on July 1, 2009.

4 19. All 30 remaining J.D. Edwards copyrights in suit that are not listed in ¶¶ 3, 17 or
5 18, above, were registered as published works and were registered within five years of first
6 publication.

7 20. One Siebel copyright in suit, TXu1-607-453, Database of Documentary Customer
8 Support Materials for Siebel Software, was registered as an unpublished work on July 1, 2009.

9 21. All four Siebel copyrights in suit that are not listed in ¶¶ 3 or 20 were registered
10 as published works and were registered within five years of first publication.

11 22. Attached as **Exhibit J** is a true and correct copy of pages 1-10, 52-57, 63, 90-92,
12 and 109-115 of Plaintiffs' Trial Exhibit 895, dated March 1999 and titled "J.D. Edwards
13 Manager Handbook." A blank form employee agreement dated February 1996, found at
14 ORCL00213676, contains a provision titled "Rights to Work Product" that includes both a work-
15 for-hire acknowledgment (stating that "J.D. Edwards shall be solely entitled to all the benefits
16 arising from . . . all work [and] work products") and an agreement to assign rights in work
17 product. A blank form contractor agreement, found at ORCL00213693 to 699, includes work-
18 for-hire acknowledgments (Art. II, § 3.3(a) and Art. IV, § 3) and agreements to assign rights in
19 work product (Art. IV, §§ 1, 3).

20 23. Attached as **Exhibit K** is a true and correct copy of Plaintiffs' Trial Exhibit 891,
21 dated June 2000 and titled "Employee Proprietary Information, Inventions, and Non-Solicitation
22 Agreement." This blank form employee agreement includes both a work-for-hire
23 acknowledgment (§ 2.6) and an assignment of and agreements to assign rights in work product
24 (§§ 2.3, 2.7).

25 24. Attached as **Exhibit L** is a true and correct copy of Plaintiffs' Trial Exhibit 902,
26 dated April 2003 and titled "JD Edwards Employee Proprietary Information, Inventions and
27 Non-Solicitation Agreement template." This blank form employee agreement includes both a
28

1 work-for-hire acknowledgment (§ 2.6) and an assignment of and agreements to assign rights in
2 work product (§§ 2.3, 2.7).

3 25. Attached as **Exhibit M** is a true and correct copy of Plaintiffs’ Trial Exhibit 901,
4 titled “Siebel Systems, Inc. Proprietary Information and Inventions Agreement.” The document
5 is hand-dated August 6, 1995. This employee agreement includes both a work-for-hire
6 acknowledgment (§ 2(b)) and an assignment of, and agreement to assign, rights in work product
7 (§ 2(b), (d)).

8 26. Attached as **Exhibit N** is a true and correct copy of Plaintiffs’ Trial Exhibit 900,
9 titled “Siebel Systems, Inc. Proprietary Information and Inventions Agreement.” The document
10 is hand-dated May 1, 1996. This employee agreement includes both a work-for-hire
11 acknowledgment (§ 2(b)) and an assignment of, and agreement, to assign rights in work product
12 (§ 2(b), (d)).

13 27. Attached as **Exhibit O** is a true and correct copy of Plaintiffs’ Trial Exhibit 899,
14 titled “Siebel Systems, Inc. Proprietary Information and Inventions Agreement.” The document
15 is hand-dated January 8, 2001. This redacted employee agreement includes both a work-for-hire
16 acknowledgment (§ 2(b)) and an assignment of and agreements to assign rights in work product
17 (§ 2(b), (d)).

18 28. Attached as **Exhibit P** is a true and correct copy of Plaintiffs’ Trial Exhibit 897,
19 titled “Siebel Systems, Inc. Proprietary Information and Inventions Agreement.” The document
20 is hand-dated October 4, 2004. This redacted employee agreement includes both a work-for-hire
21 acknowledgment (§ 2(b)) and an assignment of, and agreement to assign, rights in work product
22 (§ 2(b), (d)).

23 29. Attached as **Exhibit Q** is a true and correct copy of Plaintiffs’ Trial Exhibit 4806,
24 titled “Certificate of Recordation of JDE Companies OIC Asset Transfer Agreement.” Plaintiffs’
25 Trial Exhibit 4806 was recorded with the United States Copyright Office, bears the Volume and
26 Document No. 3569-435, and bears the United States Copyright Office seal and signature of the
27 Register of Copyrights.

28

